रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

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सं. 17] नई दिल्ली, अप्रैल 21—अप्रैल 27, 2019, शनिवार/वैशाख 1—वैशाख 7, 1941
No. 17] NEW DELHI, APRIL 21—APRIL 27, 2019, SATURDAY/VAISAKHA 1— VAISAKHA 7, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 अप्रैल, 2019

का.आ. 608.—केंद्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में मध्य प्रदेश राज्य क्षेत्र के भीतर उक्त अधिनियम के अधीन भारत पेट्रोलियम कार्पोरेशन लिमिटेड (बीपीसीएल) की बीना-पनकी पाइपलाइन परियोजना के सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए अतिरिक्त प्रभार पर"अनुविभागीय अधिकारी(राजस्व),बीना,जिला-सागर,म॰प्र॰" को भारत पेट्रोलियम कार्पोरेशन लिमिटेड में प्राधिकृत करती है।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर–11024(14)/1/2019-ओआर-I/ई-29468]

शान्तनु धर, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 22nd April, 2019

S.O. 608.— In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government herby authorizes "The Sub Divisional Officer (Revenue), Bina, Dist-Sagar M.P" on additional charge to Bharat Petroleum Corp Ltd. (BPCL) to perform the functions

of Competent Authority(s) in the State of Madhya Pradesh for Bharat Petroleum Corporation Limited's Bina - Panki pipeline project under the said Act.

This notification will be effective from the date of its issue.

[F. No. R-11024(14)/1/2019-OR-I/E-29468]

SANTANU DHAR, Under Secy.

नई दिल्ली, 22 अप्रैल, 2019

का.आ. 609.—केंद्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में, कर्नाटक राज्य क्षेत्र के भीतर उक्त अधिनियम के अधीन, भारत पेट्रोलियम कार्पोरेशन लिमिटेड (बीपीसीएल) की इरुगुर - देवनगुंथी पाइपलाइन परियोजना के सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए "विशेष भूमि अधिग्रहण अधिकारी, बेंगलुरु" को भारत पेट्रोलियम कार्पोरेशन लिमिटेड में प्राधिकृत करती है।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर - 11025(15)/1/2019 ओआर- I/ई-29453]

शान्तनु धर, अवर सचिव

New Delhi, the 22nd April, 2019

S.O. 609.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes "The Special Land Acquisition officer, Bangaluru" to perform the functions of Competent Authority(s) in the State of Karnataka for Bharat Petroleum Corporation Limited's Irugur Devangonthi pipeline project under the said Act.

This notification will be effective from the date of its issue.

[F. No. R-11025(15)/1/2019-OR-I/E-29453]

SANTANU DHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, माइक्रोवेव रखरखाव (ओएस सी) अहमदाबाद (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या. 283/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुआ था।

[सं. एल-40012/456/1999-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th April, 2019

S.O. 610.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 283/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Microwave Maintenance (OSC), Ahmedabad (Gujarat) & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-40012/456/1999-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,

Dated 20th February, 2019

Reference: (CGITA) No. 283/2004

The Director,
Microwave Maintenance (OSC),
1st Floor, Microwave Building, Navrangpura,
Ahmedabad (Gujarat) - 380001 …First Party

V/s

Shri Govind Savaji Prajapati,
C/o Gujarat Pottary Labour Union,
Near Govt. D Colony,
Near Vijay Mill, Maroda Road,
Ahmedabad (Gujarat) …Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri Hirabhai Solanki

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/456/99–IR(DU) dated 13.03.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Govind Savaji Prajapati, skilled labour w.e.f. 19.10.1996 is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 13.03.2000 and received on 14.04.2000 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 4 on 06.10.2000 and the first party submitted the written statement Ex. 7 on 22.01.2001.

3. The second party union in his statement of claim Ex. 4 has alleged that the workman named Govind Savaji Prajapati has been engaged by the first party as casual labour in the year 1992. He worked for more than 240 days in every calendar year till his termination on 19.10.1996 without giving notice and paying notice pay. Thus his termination was in violation of Section 25 F of the Industrial Disputes Act. Therefore, he has prayed for reinstatement with back wages.

4. The first party in his written statement Ex. 6 has alleged that the workman was engaged as causal labour on the need basis as and when arise. He never worked for more than 240 days in calendar year 1992 to till date of termination i.e. 19.10.1996. He was never removed or retrenched. He left the engagement at his own will.

5. On the basis of the pleadings, the following issues arise:

   i. Whether the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Govind Savaji Prajapati, skilled labour w.e.f. 19.10.1996 is legal and justified?

   ii. To what relief, if any, the concerned workmen are entitled?

6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who gave his deposition vide Ex. 21 to prove his case wherein he has reiterated the averments made in the statement of claim but admitted in his cross-examination that he was a casual labour on daily wage basis. But he has not given any evidence in his deposition that he worked for more than 240 days in any calendar year till his dis-engagement.

7. The first party examined one Pravinkumar Ramjibhai Patel vide affidavit Ex. 28 wherein he has stated that the workman was engaged as casual labour as a daily wager on need basis as and when need arise. He worked for 220 days, 229 days, 235 days, 145 days and 84 days in the financial years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97 respectively. Nothing has been deposed by him contrary to his examination-in-chief in his cross-examination.

8. I considered the evidence and arguments of the parties. The second party workman/union has failed to prove that he ever worked for 240 days in any calendar or financial year. He has also failed to prove that he was retrenched retaining the junior casual labours. Thus the second party union/workman failed to prove his case regarding illegal retrenchment on 19.10.1996 by the first party. Both the issues are decided against the workman/second party union.

9. The reference is dismissed for want of evidence with the observation as under: "the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Govind Savaji Prajapati, skilled labour w.e.f. 19.10.1996 is legal and justified."

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 611.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, माइक्रोवेव रखरखाव (गुजरात) अहमदाबाद (ओएस सी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या. 284/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुआ था।

[सं. एल-40012/455/1999- आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 611.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 284/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Microwave Maintenance (OSC), Ahmedabad (Gujarat) & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-40012/455/1999-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad,

Dated 20th February, 2019

Reference: (CGITA) No. 284/2004

The Director,
Microwave Maintenance (OSC),
1st Floor, Microwave Building, Navrangpura,
Ahmedabad (Gujarat) - 380006 ...First Party

V/s

Shri Dashrath Maganbhai Prajapati,
C/o Gujarat Pottery Labour Union, Near Government D Colony,
Near Vijay Mill, Narola Road,
Ahmedabad (Gujarat) - 380001 ...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri Hirabhai Solanki

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/455/99–IR(DU) dated 13.03.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Dashrath Magambhai Prajapati, skilled labour w.e.f. 17.12.1998 is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 13.03.2000 and received on 14.04.2000 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 4 on 06.10.2000 and the first party submitted the written statement Ex. 6 on 22.01.2001.

3. The second party union in his statement of claim Ex. 4 has alleged that the workman named Dashrath Magambhai Prajapati has been engaged by the first party as casual labour in the year 1993. He worked for more than 240 days in every calendar year till his termination on 17.12.1998 without giving notice and paying notice pay. Thus his termination was in violation of Section 25 F of the Industrial Disputes Act. Therefore, he has prayed for reinstatement with back wages.

4. The first party in his written statement Ex. 6 has stated that the workman was engaged as causal labour on the need basis as and when arise. He never worked for more than 240 days in calendar year 1993 to till 17.12.1998. He was never removed or retrenched. He left the engagement at his own will.

5. On the basis of the pleadings, the following issues arise:

   i. Whether the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Dashrath Magambhai Prajapati, skilled labour w.e.f. 17.12.1998 is legal and justified?

   ii. To what relief, if any, the concerned workmen are entitled?

6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who gave his deposition vide Ex. 19 to prove his case wherein he has reiterated the averments made in the statement of claim but admitted in his cross-examination that he was a casual labour on daily wage basis. But he has not given any evidence in his deposition that he worked for more than 240 days in any calendar year till his dis-engagement.

7. The first party examined one Pravinkumar Ramjibhai Patel vide affidavit Ex. 26 wherein he has stated that the workman was engaged as casual labour as a daily wager on need basis as and when need arise. He worked for 156 days, 183 days, 146 days, 216 days, 110 days and 44 days in the financial years 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 and 1998-99 respectively. Nothing has been deposed by him contrary to his examination-in-chief in his cross-examination.

8. I considered the evidence and arguments of the parties. The second party workman/union has failed to prove that he ever worked for 240 days in any calendar or financial year. He has also failed to prove that he was retrenched retaining the junior casual labours. Thus the second party union/workman failed to prove his case regarding illegal retrenchment on 17.12.1998 by the first party. Both the issues are decided against the workman/second party union.

9. The reference is dismissed for want of evidence with the observation as under: "the action of the management of Microwave Maintenance, OSC, Department of Telecom, Ahmedabad in terminating the services of Shri Dashrath Magambhai Prajapati, skilled labour w.e.f. 17.12.1998 is legal and justified."

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 612.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैनेजर, कोलकाता मरीन एंड इंजीनियरिंग सर्विसेज प्राइवेट लिमिटेड, कोलकाता, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या. 24/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुआ था ।

[सं. एल-42012/98/2015-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 612.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2015) of the Central Government Industrial Tribunal-cum-Labour Court Kolkota, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, Kolkota Marine & Engineering Services Pvt. Ltd., Kolkata & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-42012/98/2015-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 24 of 2015

Parties: Employers in relation to the management of

M/s. Indus Towers Ltd

AND

Their workmen.

Present: Justice Ravindra Nath Mishra Presiding Officer

Appearance:

On behalf of the	: Mr. Ranjay De, learned counsel for Indus Towers.
Management	Mr. D. Mukherjee, Manager for M/s. Kolkata Marin & Engineering Services Pvt. Ltd.
On behalf of the Workmen	:None

State: West Bengal

Dated: 6th March, 2019

AWARD

By Order No.L-42012/98/2015-IR(DU) dated 19.05.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of management of M/s Kolkata Marine & Engineering Services Pvt. Ltd., contractor of M/s Indus Towers Ltd. is justified in terminating Shri Jay Prakash Gupta at the age of 58 years instead of 65 years stipulated under Section 10(b) of the Private Security Agency (Regulation) Act, 2005 is legal and/ or justified? If not, what relief the workmen are entitled to?"*

2. When the case was taken up for hearing, none appeared for the workman concerned though M/s. Indus Towers Ltd. and M/s. Kolkata Marine & Engineering Services Pvt. Ltd. are represented by their learned counsel and authorized representative respectively. Authorized representative of M/s. Kolkata Marine & Services Pvt. Ltd. has filed an affidavit endorsing amicable settlement between the workman and the contractor of M/s Indus Towers Ltd., i.e., M/s. Kolkata Marine & Engineering Services Pvt. Ltd., in terms whereof the workman concerned has been paid Rs.6,571/= by an account payee cheque dated 02.06.2002. A receipt of which has also been annexed to the affidavit which shows that the actual date of receipt of cheque is 27th May, 2014. It appears that due to some typographical error the date in affidavit has been mentioned as 02.06.2002. However, the receipt of cheque shows that the actual date of receipt of cheque is 27.05.2014.

3. None responded calls for the workman concerned, but after receipt of money by the workman his attendance is not needed. So no need to summon him as the matter is already settled between the parties.

4. Learned counsel for M/s Indus Towers Ltd. is present. However, terms of reference shows that it has nothing to do with the dispute in question as Kolkata Marine & Engineering Services Pvt. Ltd. has been mentioned as contractor of M/s Indus Towers Ltd.

5. In the circumstances, the matter is amicably settled between the parties and no dispute exists and therefore, a "No Dispute" Award is passed.

Dated, Kolkata,

The 6th March, 2019 JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 613.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत संचार निगम लिमिटेड के प्रबंधक, पालनपुर बी के अहमदाबाद (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद के पंचाट (संदर्भ संख्या. 479/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/03/19 को प्राप्त हुआ था।

[सं. एल-40012/293/2001-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 613.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 479/2004) of the Central Government Industrial Tribunal-cum-Labour Court-1, Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager, Bharat Sanchar Nigam Limited, Palanpur (B.K.) Ahmedabad (Gujarat) & Others, and their workmen which were received by the Central Government on 27/03/19.

[No. L-40012/293/2001-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,
Dated 06th March, 2019

Reference: (CGITA) No. 479/2004

1. The Telecom District Manager,
Bharat Sanchar Nigam Limited,
Ganj Market,
Palanpur (B.K.) – 385001
2. The Sub-Divisional Officer,
Telegraphs, Telecom Department,
Deesa (B.K.) – 385535 ...First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Near Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) - 380007 ...Second Party

For the First Parties : Shri H.R. Raval

For the Second Party : Shri R.C. Pathak and Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/293/2001–IR(DU) dated 01.04.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Brijbihari Ramkailash Singh is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?"

1. The reference dates back to 01.04.2002 and received on 20.04.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 7 on 22.11.2002 and the first party submitted the written statement Ex. 9 on 22.12.2003. Since then the second party workman has not been leading evidence and today on 06.03.2019, Shri Chintan Gohel, the advocate for the second party workman stated that the workman has not been in his contact since long.
3. Thus it appears that the second party workman is not willing to prosecute the case.
4. Therefore, the reference is disposed of in the absence of the evidence of the second party workman with the observation as under: "the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Brijbihari Ramkailash Singh is legal, proper and justified."
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 614.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक भारत संचार निगम लिमिटेड, हिम्मतनगर (एस के) (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या. 472/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुए थे।

[सं. एल-40012/287/2001- आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 614.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 472/2004) of the Central Government Industrial Tribunal-cum-Labour Court-1 Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General manager, Bharat Sanchar Nigim Limited, Himmatnagar (S.K.) (Gujarat) & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-40012/287/2001-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,
Dated 06th March, 2019

Reference: (CGITA) No. 472/2004

1. The General Manager,
Bharat Sanchar Nigam Limited,
Himmatnagar Telecom District, Himmatnagar Exchange,
Himmatnagar (S.K.) - 383001

2. The Sub-Divisional Officer (Telegraph),
Bharat Sanchar Nigam Limited,
Modasa Telephone Exchange, Near ICE Factory,
Modasa (Gujarat) …First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Near Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) - 380007 …Second Party

For the First Parties : Shri N.K. Trivedi

For the Second Party : Shri R.C. Pathak and Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/287/2001–IR(DU) dated 11.03.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Telecom (New Bharat Sanchar Nigam Limited) is justified in terminating the services of Smt. Nitaben Kishanlal Majirana, Water Women cum Sweeper, Modasa w.e.f. 28.06.1996? If not, what relief the workman is entitled to?"

1. The reference dates back to 11.03.2002 and received on 05.04.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, second party work-woman submitted the statement of claim Ex. 8 on 16.08.2002 and the first party submitted the written statement Ex. 13 on 29.01.2003. Since then the second party work-woman has not been leading evidence and today on 06.03.2019, Shri Chintan Gohel, the advocate for the second party work-woman stated that the work-woman has not been in his contact since long.

3. Thus it appears that the second party work-woman is not willing to prosecute the case.

4. Therefore, the reference is disposed of in the absence of the evidence of the second party work-woman with the observation as under: "the action of the management of Telecom (New Bharat Sanchar Nigam Limited) is justified in terminating the services of Smt. Nitaben Kishanlal Majirana, Water Women cum Sweeper, Modasa w.e.f. 28.06.1996."

5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 615.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, अलगप्पा टेक्सटाइल (कोचीन) मिल्स, त्रिचूर कोचीन और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोचीन के पंचाट (संदर्भ संख्या. 49/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/03/19 को प्राप्त हुए थे ।

[सं. एल-42011/99/2014-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 615.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 49/2014**) of the **Central Government Industrial Tribunal-cum-Labour Court CGIT Cochin,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Alagappa Textiles (Cochin) Mills, Thrissur Cochin & Others, and their workmen** which were received by the Central Government on **22/03/19.**

[No. L-42011/99/2014-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B.Sc., LLM, Presiding Officer

(Thursday the 31st day of January, 2019)

ID No. 49/2014

Union: The Jilla President,
Trissur Jilla Textie Mazdor Sangh,
Thiruvambadi. P.O., Shornur Road,
Patturayakkal, Thrissur-680 022.
By Adv. Binu Paul.

Management: The General Manager,
Alagappa Textiles (Cochin) Mills,
Alagappa Nagar,
Thrissur – 680 320.
By Adv. C. Anil Kumar

This case coming up for hearing on 31.01.2019 and this Tribunal-cum-Labour Court passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication before this Tribunal is:

'Whether the action of the management of Alagappa Textile Mills in refusing promotion to Shri.V.D. Francis, Token No.2244 and promoting his juniors is justified and proper? If not what relief the workman is entitled to?

3. The Counsel for the Union filed a memo to the effect that the Workman is already promoted. It is also submitted by the Counsel for the Management that the Workman has already retired and all terminal benefits are settled.

4. In view of the above the award is passed dismissing the claim as withdrawn in terms of the Memo filed by the Union. The Memo dated 18.12.2018, filed by the Union will form part of the Award.

Dictated to the Assistant, transcribed and typed by him, corrected and passed by me on this the 31st day of January 2019.

APPENDIX

1. Memo dated 18.12.2018 filed by the Union.

BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID No.49 of 2014

BETWEEN

The Jilla President, Trissur Jilla Textile Mazdor Sangh, Thiruvambady

P.O, Shornur Road, Patturayakkal, Trissur, Kerala – 680 022.

And

The Management of the Alagappa Textile (Cochin) Mills, Alagappa

Nagar, Trissur, Kerala – 680 320.

MEMO FILED BY THE COUNSLE FOR THE UNION

The union/workman wishes to withdraw the above case for the reason that the workman Mr.V.D.Francis was promoted to the post of gear leader. Therefore the case had become infructuous.

The above case may be dismissed as withdrawn.

Dated this the 18th day of December, 2018.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 616.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अनुविभागीय अधिकारी, टेलीग्राफ, दूरसंचार विभाग, जूनागढ़ (गुजरात) अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या 1069/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/03/19 को प्राप्त हुए थे।

[सं. एल-40012/200/1996-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 616.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1069/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sub-Divisional Officer, Telegraphs, Telecom Department, Junagadh (Gujarat) & Others, and their workmen which were received by the Central Government on 27/03/19.

[No. L-40012/200/1996-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,
Dated 19th February, 2019

Reference: (CGITA) No. 1069/2004

1. The Sub-Divisional Officer,
   Telegraphs, Telecom Department,
   Junagadh (Gujarat)
2. The Sub-Divisional Officer,
   Telegraphs, Telecom Department,
   Morvi
3. The Telecom District Manager,
   Telecom Department, Bhuj,
   Kutch (Gujarat) - 370001 …First Parties

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex,
Office No. 213 & 214, 2nd Floor,
Near Chaudhary High School,
Rajkot (Gujarat) …Second Party

For the First Parties : Shri H.R. Raval

For the Second Party : Shri Parag Vora

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/200/96–IR(DU) dated 26.09.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of the S.D.O., Telegraphs, Telecom Department, Junagadh/S.D.O., Telegraphs, Morvi under the Telecom District Manager, Telecom Department, Bhuj (Kutch) – 370001 in terminating the services of Shri Siyaram S/o Rambaran Ram, Casual labourer is legal and justified? If not, to what relief the workman is entitled to?"

1. The reference dates back to 26.09.1997 and received on 13.10.1997 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 1 and 7 on 18.03.1998 and 03.08.1999 respectively. The first party submitted the written statement Ex. 16 on 27.01.2012 along with list of documents vide Ex. 19. Since then the second party workman has not been appearing and has also not been leading his evidence. On 28.06.2018, Shri Parag M. Vora filed his vakalatpatra Ex. 22 on behalf of the second party workman but the second party workman or his advocate despite filing the vakalatpatra refrained to lead the evidence.
3. Thus it appears that the second party workman is not willing to prosecute the reference.
4. Therefore, the reference is disposed of in the absence of the evidence of the second party workman with the observation as under: "the action of the management of the S.D.O., Telegraphs, Telecom Department, Junagadh/S.D.O., Telegraphs, Morvi under the Telecom District Manager, Telecom Department, Bhuj (Kutch) – 370001 in terminating the services of Shri Siyaram S/o Rambaran Ram, Casual labourer is legal and justified."
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 617.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, दूरसंचार जिला भारत संचार निगम लिमिटेड, पालनपुर (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या. 480/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुए थे।

[सं. एल-40012/294/2001-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 617.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 480/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Telecom District Manager, Bharat Sanchar Nigam Limited, Palanpur (B.K.) (Gujarat) & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-40012/294/2001-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum Labour Court, Ahmedabad,
Dated 06th March, 2019

Reference: (CGITA) No. 480/2004

1. The Telecom District Manager,
Bharat Sanchar Nigam Limited,
Ganj Market, Palanpur (B.K.) – 385001

2. The Sub-Divisional Officer,
Telegraphs, Telecom Department,
Deesa (B.K.) – 385535 …First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Near Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) - 380007 …Second Party

For the First Parties : Shri H.R. Raval

For the Second Party : Shri R.C. Pathak and Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/294/2001–IR(DU) dated 01.04.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Ramesh Singh Jagu Singh is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?"

1. The reference dates back to 01.04.2002 and received on 20.04.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, second party workman submitted the statement of claim Ex. 6 on 22.11.2002 and the first party submitted the written statement Ex. 8 on 22.12.2003. Since then the second party workman has not been leading evidence and today on 06.03.2019, Shri Chintan Gohel, the advocate for the second party workman stated that the workman has not been in his contact since long.

3. Thus it appears that the second party workman is not willing to prosecute the case.

4. Therefore, the reference is disposed of in the absence of the evidence of the second party workman with the observation as under: "the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Ramesh Singh Jagu Singh is legal, proper and justified."

5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 618.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, दूरसंचार जिला भारत संचार निगम लिमिटेड, पालनपुर बी.के. (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या. 481/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/03/19 को प्राप्त हुए थे ।

[सं. एल-40012/292/2001-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 618.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 481/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Microwave Maintenance (OSC), Ahmedabad Telecom District Manager, Bharat Sanchar Nigam Limited, Palanpur (B.K.) (Gujarat) & Others, and their workmen which were received by the Central Government on 12/03/19.

[No. L-40012/292/2001-IR(DU)]

V. K. THAKUR , Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 06th March, 2019

Reference: (CGITA) No. 481/2004

1. The Telecom District Manager,
   Bharat Sanchar Nigam Limited, Ganj Market,
   Palanpur (B.K.) – 385001
2. The Chief General Manager,
   Telecom Department, Khanpur,
   Ahmedabad (Gujarat) – 380001 …First Parties

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Near Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) - 380007 …Second Party

For the First Parties : Shri H.R. Raval

For the Second Party : Shri R.C. Pathak and Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/292/2001–IR(DU) dated 01.04.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Kishorebhai Ranchhodbhai Solanki is legal, proper and justified? If not, to what relief the concerned workman is entitled and what other directions are necessary in the matter?"

1. The reference dates back to 01.04.2002 and received on 20.04.2002 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.
2. After issuing notice to the parties, the second party workman did not prefer to submit the statement of claim and instead of filing statement of claim, moved an application Ex. 10 on 30.01.2009 for production of documents to which the first party Bharat Sanchar Nigam Limited submitted the reply Ex. 11 on 10.01.2017. On 10.01.2017, Shri Chintan Gohel moved an application Ex. 12 for seeking adjournment. Since then the second party workman has been absent and has not submitted the statement of claim. Today on 06.03.2019, Shri Chintan Gohel, the advocate for the second party workman stated that the workman has not been in his contact since long.
3. Thus it appears that the second party workman is not willing to prosecute the case.
4. Therefore, the reference is disposed of in the absence of the statement of claim of the second party workman with the observation as under: "the action of the management of Bharat Sanchar Nigam Limited (Telecom District) in terminating the services of Shri Kishorebhai Ranchhodbhai Solanki is legal, proper and justified."
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 619.—औद्योगिक विवाद अधिनियम,1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रिसीपल, जवाहर नवोदय विधालय, सुरेन्द्र नगर, (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद के पंचाट (संदर्भ संख्या 1120/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/03/19 को प्राप्त हुए थे।

[सं. एल-42012/22/1999-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 619.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1120/2004) of the Central Government Industrial Tribunal-cum-Labour Court-1 Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal, Jawahar Navodaya Vidhayalaya, Surendranagar (Gujarat) & Others, and their workmen which were received by the Central Government on 27/03/19.

[No. L-42012/22/1999-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 14th March, 2019

Reference: (CGITA) No- 1120/2004

The Principal,
Jawahar Navodaya Vidhyalaya,
At and PO Dhrangadhra,
Surendranagar (Gujarat) - 363310 …First Party

V/s

Shri Khimjibhai Govindbhai Chhasiya,
Juni Kharawad, Haripar Road,
Dhrangadhra,

Surendranagar (Gujarat) - 363315 …Second Party

For the First Parties : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak and Shri Chintan Gohel

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/22/99–IR(DU) dated 22.07.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the Principal, Jawahar Navodaya Vidhyalaya, Dhrangadhra in terminating the services of Shri Khimjibhai Govindbhai Chhasiya, Part Time Driver is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 22.07.1999 and received on 16.08.1999 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, the second party workman Khimjibhai Govindbhai Chhasiya, hereinafter referred to as 'workman' submitted the statement of claim Ex. 4 on 18.10.1999 and the first party The Principal, Jawahar Navodaya Vidhyalaya, at and P.O. Dhrangadhra, Surendranagar submitted the written statement Ex. 9 on 29.11.1999.

3. The second party workman named Khimjibhai Govindbhai Chhasiya vide statement of claim Ex. 4 has alleged that he has been serving in Jawahar Navodaya Vidhyalaya under the first party The Principal, Jawahar Navodaya Vidhyalaya, At and PO Dhrangadhra, Surendranagar, hereinafter referred to as 'the first party' since 15.02.1996 to 26.09.1997 on the monthly pay of Rs.2138/- but his services were terminated by the first party on 26.09.1997 by a oral order. He was not served any notice or given notice pay. Juniors were permitted to continue in service and new employees were engaged to perform the duty which he used to perform. Thus his termination of service was in violation of Section 25 F, G and H of the Industrial Disputes Act. He has further

alleged that he was eligible to be regularised for service as he served for 240 days in the preceding calendar year. Thus he has prayed for declaring the termination of his service as illegal and for reinstatement on the original post with back wages.

4. The first party vide written statement Ex. 9 submitted that the workman had been working as a part time worker purely on daily rated basis, therefore, was not entitled for regularisation and employment in the first party Jawahar Navodaya Vidhyalaya. It is true that he had been working as driver from 15.02.1996 to 26.09.1997 but the allegation that his termination by way of oral order is false, baseless, illegal and misconceived. It is also false and misconceived that he served for more than 240 days and the Principal, Jawahar Navodaya Vidhyalaya is not willing to reinstate his services. He was purely a part time and daily rated employee on stop-gap arrangement; therefore, he has no right to be reinstated in service. It is noteworthy that the workman moved the High Court of Gujarat in Special Civil Application No. 8259/1997 wherein the Hon'ble High Court issued direction to appoint him after a due procedure of recruitment. Therefore, he was called for interview and was not selected. As the workman was appointed on stop-gap arrangement till the regular employees joined, therefore, he has no right to be reinstated with back wages.

5. On the basis of the pleadings, the following issues arise:

   i. Whether the action of the Principal, Jawahar Navodaya Vidhyalaya, Dhrangadhra in terminating the services of Shri Khimjibhai Govindbhai Chhasiya, Part Time Driver is legal and justified?

   ii. To what relief, if any, the concerned workman is entitled?

6. **Issue No. i and ii:** As both the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who was examined vide affidavit Ex. 15 wherein he reiterated the averments made in the statement of claim and in his cross-examination, he has not said anything contrary to his examination-in-chief. But he has not submitted the copy of appointment letter which may show that he was appointed as driver on regular basis against a sanctioned post.

7. The first party examined Chitturi Sekhar Babu, the Principal, Jawahar Navodaya Vidhyalaya vide affidavit Ex. 20 who denied that the workman was appointed as driver on regular basis. He has stated that the workman was appointed as a driver on daily rated basis under a stop-gap arrangement and he was relieved on 26.09.1997.

8. The first party submitted the documents vide list Ex. 22 regarding the payment of wages by vouchers and the minutes of the appointment committed of drivers vide Ex. 22/2 which does not reveal that this driver was appointed as a regular employee against a sanctioned post. The first party also submitted the copy of the judgement of Gujarat High Court in SCA No. 8259/1997 wherein the High Court issued directions but has not ordered the appointment of this driver on regular basis.

9. Both the parties submitted the written arguments. I considered the arguments and evidence available on record. It is a settled law that a daily wager has no right for reinstatement and regularisation in service, though might have served for one and half year without due process of recruitment. It is noteworthy that the vehicle for which he was engaged has been declared condemn vide letter no. F-3-123/NVS(PR)(SA)2012-13/219 dated 13.07.2012 of The Assistant Commissioner (School Admn.), Navodaya Vidyalaya Samiti, Sector 62, Institutional Area, Noida, Uttar Pradesh. It is also noteworthy that the first party has submitted the vouchers of the payment of wages to the workman from 15.02.1996 to 26.09.1997 which makes out a case that the workman worked for more than 240 days but it is very unfortunate that the vehicle has been condemned by the letter as stated above, therefore, though the post of driver is sanctioned as appears vide letter F. No. 2-18 Staff Selection/2018-19 of The Deputy Commissioner (Establishment), Navodaya Vidyalaya Samiti, Pune. Thus as there is no requirement of driver in the absence of vehicle, therefore, relief of reinstatement cannot be ordered. However, as and when the vehicle is sanctioned and made available to the Jawahar Navodaya Vidhayalaya, Surendranagar by the head quarter of the Jawahar Navodaya Vidhayalaya, the Principal of Jawahar Navodaya Vidhayalaya, Surendranagar shall reengaged and reemploy the second party workman named Khimjibhai Govindbhai Chhasiya on preference basis as driver if he is eligible and found suitable for the post. Both the issues are decided accordingly.

10. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 620.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ब्लू शील्ड प्रोटेक्शन नेटवर्क, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 41/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18/03/.2019 को प्राप्त हुए थे।

[सं. एल—42012/156/2015—आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the The Blue Shield Protection Network, New Delhi & others and their workmen, received by the Central Government on 18/.03/.2019.

[No. L-42012/156/2015-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.41/2015

Registered on 16.10.2015

Sh. Rahul, S/o Sh. Ram Kalan, R/o M.C. Colony near Sugar Mill, Karnal …Workman

Versus

1. M/s. Blue Shield Protection Network, B4/45 Safdar Jung Enclave, New Delhi, 110029, now at L-11 Green Park Extension, New Delhi.
2. Soma Esolex Pvt. Ltd. Regd. Off. Model Town,
   Ambala Cantt. Ambala near Maruti Car Driving School, Ambala …Respondents

AWARD

Passed on: 06.03.2019

Central Government vide Notification No. L-42012/156/2015-IR(DU) Dated 30.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of No. 1 M/s. Blue Shield Protection Network Pvt. Ltd., in terminating the services of the workman Sh. Rahul S/o Ram Kalan is justified or not? If not, what relief the workman is entitled to and from which date?"

1. The facts, in brief, are that Sh. Rahul was appointed as Security Guard at toll plaza Nilokheri by respondent no. 1 on 11.02.2012 and worked continuously up to 14.02.2015 as Gunman at fixed pay of Rs.9,300/- per month including Sunday and his service was dispensed with when he raised the demand for overtime without giving any notice and retrenchment compensation and without following the procedure of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is also alleged that the work against which the workman had been working still exists and the juniors to the workman were retained in service as well as new persons has also been appointed by the respondents which is a punishable offence under Section 32 and 34 of the Industrial disputes Act. It is also alleged that the applicant/workman had filed a demand notice in this respect before ALC Karnal, but of no use.

2. Respondent No.1 filed written statement, alleging therein that being agency of the contractor for supplying security personnel and other staff as per requirement of the principal employer is not an industry as per Section 2(j) of the Industrial Disputes Act, 1947. That the claimant/workman has no locus standi to file claim statement because he has

transferred from Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Knight Frank Property Services Pvt. Ltd., Salcon Aurum Jasola, New Delhi as per terms and conditions of employment. It is not open for the workman to decide the place where he was worked and choose the time he wants to join and this Court has no jurisdiction to interfere with the transfer or the workman. It is admitted to the extent that he was employed on 11.02.2012 as Security Guard and later on he was promoted as Security Supervisor. He was never employed as Gunman as stated in his claim statement. His service was not terminated and he was transferred to Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Knight Frank Property Services Pvt. Ltd., Salcon Aurum Jasola, New Delhi on 14.02.2015 and offered a salary of Rs11,412/- at new place of posting enhancing the salary amounting to Rs.2,112/-. The claimant/workman refused to take letter for transfer and consequently, transfer letter was sent to his residential address through registered post but he did not care to join duty till today and filed demand notice before the Assistant Labour Commissioner(Central) Karnal, just to harass the respondent-company. The workman did not join his new place at Gurgaon and was charge-sheeted vide charge-sheet dated 10.10.2015 on account of perusal of transfer order. The regular domestic enquiry was conducted through independent agency and all the charges were proved. Show cause notice dated 15.03.2016 was also issued to him but he did not replied. Hence, his services were dismissed vide letter dated 11.04.2016 and intimation to this effect was also issued to him through registered post.

3. Claimant/workman is gainfully employed to transfer and it is prayed that the claim statement filed by the claimant/workman may be rejected as he is not entitled to any relief including reinstatement in service and back wages as prayed.

4. Respondent no.2 filed separate written statement, alleging therein that there was no relationship of master and servant between the workman and answering respondent, being licenced contractor under Conract Labour(Regulation and Abolition Act, 1970) has given sub-contract to M/s Blue Shield Protection Network Pvt. Ltd., Delhi for providing security personnel for the smooth running of construction work. It is further alleged that workman was working with respondent no.1 at Gharaunda Toll Plaza being sub-contractor of answering respondent. His salary was paid by respondent no.1. The work and conduct of the workman was not satisfactory during his service. Workman had never served under responding-management. Hence, it cannot be said that the claimant/workman worked more than 240 days or his services were terminated by respondent no.2. The claim statement of the workman is not tenable in law against the answering respondent and he is not entitled for any relief.

5. Perusal of the file reveals that due to regular absence of the workman and his counsel, case was ordered to be proceeded ex parte on 24.11.2016, since then none has turned up on behalf of the workman till today. Thus, there is only claim petition as well as written statement on behalf of both the respondents and nothing is brought on record in support of the claim petition by the workman.

6. Resultantly, no claim award/no dispute award is passed against the workman. It is also clarified that passing of the no claim award would not bar the workman from approaching the Appropriate government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 621.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ब्लू शील्ड प्रोटेक्शन नेटवर्क, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 48/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.03.2019 को प्राप्त हुआ था।

[सं. एल–42012/157/2015–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the Blue Shield Protection Network, New Delhi and Others, and their workmen which were received by the Central Government on 18.03.2019.

[No. L-42012/157/2015-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sh. A.K. Singh, Presiding Officer

ID No. 48/2015

Registered on 16.10.2015

Sh. Bhagirath Singh, S/o Sh. Jai Singh,
R/o Village Bhutana, P.O. Nilokheri, Karnal …Workman

Versus

1. M/s. Blue Shield Protection Network, B4/45 Safdar Jung Enclave, New Delhi, 110029, now at L-11 Green Park Extension, New Delhi.
2. Soma Esolex Pvt. Ltd. Regd. Off. Model Town,
Ambala Cantt. Ambala near Maruti Car Driving School, Ambala …Respondents

AWARD

Passed on: 06.03.2019

Central Government vide Notification No. L-42012/157/2015-IR(DU) Dated 30.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of No. 1 M/s. Blue Shield Protection Network Pvt. Ltd., in terminating the services of the workman Sh. Bhagirath S/o Jai Chand is justified or not? If not, what relief the workman is entitled to and from which date?"

1. The facts, in brief, are that Sh. Bhagirath Singh was appointed as Security Guard at toll plaza Nilokheri by respondent no.1 on 01.04.2010 and worked continuously up to 14.02.2015 as Gunman at fixed pay of Rs. 9,300/- per month including Sunday and his service was dispensed with when he raised the demand for overtime without giving any notice and retrenchment compensation and without following the procedure of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is also alleged that the work against which the workman had been working still exists and the juniors to the workman were retained in service as well as new persons has also been appointed by the respondents which is a punishable offence under Section 32 and 34 of the Industrial disputes Act. It is also alleged that the applicant/workman had filed a demand notice in this respect before ALC Karnal, but of no use.

2. Respondent No.1 filed written statement, alleging therein that being agency of the contractor for supplying security personnel and other staff as per requirement of the principal employer is not an industry as per Section 2(j) of the Industrial Disputes Act, 1947. That the claimant/workman has no locus standi to file claim statement because he has transferred from Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Orris Infrastructure Pvt. Ltd., Oris Carnation, Gurgaon as per terms and conditions of employment. It is not open for the workman to decide the place where he was worked and choose the time he wants to join and this Court has no jurisdiction to interfere with the transfer or the workman. It is admitted to the extent that he was employed on 01.04.2010 as Security Guard and later on he was promoted as Security Supervisor. He was never employed as Gunman as stated in his claim statement. His services was not terminated and he was transferred to Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Orris Infrastructure Pvt. Ltd., Oris Carnation, Gurgaon on 14.02.2015 and offered a salary of Rs11,500/- at new place of posting enhancing the salary amounting to Rs.2,200/-. The claimant/workman refused to take letter for transfer and consequently, transfer letter was sent to his residential address through registered post but he did not care to join duty till today and filed demand notice before the Assistant Labour Commissioner(Central) Karnal, just to harass the respondent-company. The workman did not join his new place at Gurgaon and was charge-sheeted vide charge-sheet dated 10.10.2015 on account of perusal of transfer order. The regular domestic enquiry was conducted through independent agency and all the charges were proved. Show cause notice dated 15.03.2016 was also issued to him but he did not replied. Hence, his services were dismissed vide letter dated 11.04.2016 and intimation to this effect was also issued to him through registered post.

3. Claimant/workman is gainfully employed to transfer and it is prayed that the claim statement filed by the claimant/workman may be rejected as he is not entitled to any relief including reinstatement in service and back wages as prayed.

4. Respondent no.2 filed separate written statement, alleging therein that there was no relationship of master and servant between the workman and answering respondent, being licenced contractor under Conract Labour(Regulation and Abolition Act, 1970) has given sub-contract to M/s Blue Shield Protection Network Pvt. Ltd., Delhi for providing security personnel for the smooth running of construction work. It is further alleged that workman was working with respondent no.1 at Gharaunda Toll Plaza being sub-contractor of answering respondent. His salary was paid by respondent no.1. The work and conduct of the workman was not satisfactory during his service. Workman had never

served under responding-management. Hence, it cannot be said that the claimant/workman worked more than 240 days or his services were terminated by respondent no.2. The claim statement of the workman is not tenable in law against the answering respondent and he is not entitled for any relief.

5. Perusal of the file reveals that due to regular absence of the workman and his counsel, case was ordered to be proceeded ex parte on 24.11.2016, since then none has turned up on behalf of the workman till today. Thus, there is only claim petition as well as written statement on behalf of both the respondents and nothing is brought on record in support of the claim petition by the workman.

6. Resultantly, no claim award/no dispute award is passed against the workman. It is also clarified that passing of the no claim award would not bar the workman from approaching the Appropriate government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 622.—औद्योगिक विवाद अधिनियम 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ब्लू शील्ड प्रोटेक्शन नेटवर्क, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 49/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.03.2019 को प्राप्त हुआ था।

[सं. एल–42012/158/2015–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the Blue Shield Protection Network, New Delhi and Others, and their workmen which were received by the Central Government on 18.03.2019.

[No. L-42012/158/2015-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 49/2015

Registered on 16.10.2015

Sh. Lakhvinder Singh, S/o Sh. Jai Bhagwan, R/o V.P.O. Padhana, Karnal …Workman

Versus

1. M/s. Blue Shield Protection Network, B4/45 Safdar Jung Enclave, New Delhi, 110029, now at L-11 Green Park Extension, New Delhi.
2. Soma Esolex Pvt. Ltd. Regd. Off. Model Town,
   Ambala Cantt. Ambala near Maruti Car Driving School, Ambala …Respondents

AWARD

Passed on : 06.03.2019

Central Government vide Notification No. L-42012/158/2015-IR(DU) Dated 30.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of No.1 M/s. Blue Shield Protection Network Pvt. Ltd., in terminating the services of the workman Sh. Lakhvinder Singh S/o Sh. Jai Bhagwan is justified or not? If not, what relief the workman is entitled to and from which date?"

1. The facts, in brief, are that Sh. Lakhvinder Singh was appointed as Security Guard at toll plaza Nilokheri by respondent no.1 on 02.08.2010 and worked continuously up to 14.02.2015 as Gunman at fixed pay of Rs.9,300/- per month including Sunday and his service was dispensed with when he raised the demand for overtime without giving any notice and retrenchment compensation and without following the procedure of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is also alleged that the work against which the workman had been working still exists and the juniors to the workman were retained in service as well as new persons has also been appointed by the respondents which is a punishable offence under Section 32 and 34 of the Industrial disputes Act. It is also alleged that the applicant/workman had filed a demand notice in this respect before ALC Karnal, but of no use.

2. Respondent No.1 filed written statement, alleging therein that being agency of the contractor for supplying security personnel and other staff as per requirement of the principal employer is not an industry as per Section 2(j) of the Industrial Disputes Act, 1947. That the claimant/workman has no locus standi to file claim statement because he has transferred from Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Blueshield Branch Office at Village Panjdhera, Opposite Sutluj Classic Hotel, Near Laddhdowal Toll, Tehsil Phillaur, District Jalandhar, Punjab as per terms and conditions of employment. It is not open for the workman to decide the place where he was worked and choose the time he wants to join and this Court has no jurisdiction to interfere with the transfer or the workman. It is admitted to the extent that he was employed on 02.08.2010 as Security Guard and later on he was promoted as Security Supervisor. He was never employed as Gunman as stated in his claim statement. His service was not terminated and he was transferred to Bastara Toll Plaza Gharaunda, Distt. Karnal to site of answering respondent at Blueshield Branch Office at Village Panjdhera, Opposite Sutluj Classic Hotel, Near Laddhdowal Toll, Tehsil Phillaur, District Jalandhar, Punjab on 14.02.2015 and offered a salary of Rs.9,900/- at new place of posting enhancing the salary amounting to Rs.600/-. The claimant/workman refused to take letter for transfer and consequently, transfer letter was sent to his residential address through registered post but he did not care to join duty till today and filed demand notice before the Assistant Labour Commissioner(Central) Karnal, just to harass the respondent-company. The workman did not join his new place at Gurgaon and was charge-sheeted vide charge-sheet dated 10.10.2015 on account of perusal of transfer order. The regular domestic enquiry was conducted through independent agency and all the charges were proved. Show cause notice dated 15.03.2016 was also issued to him but he did not replied. Hence, his services were dismissed vide letter dated 11.04.2016 and intimation to this effect was also issued to him through registered post.

3. Claimant/workman is gainfully employed to transfer and it is prayed that the claim statement filed by the claimant/workman may be rejected as he is not entitled to any relief including reinstatement in service and back wages as prayed.

4. Respondent no.2 filed separate written statement, alleging therein that there was no relationship of master and servant between the workman and answering respondent, being licenced contractor under Conract Labour(Regulation and Abolition Act, 1970) has given sub-contract to M/s. Blue Shield Protection Network Pvt. Ltd., Delhi for providing security personnel for the smooth running of construction work. It is further alleged that workman was working with respondent no.1 at Gharaunda Toll Plaza being sub-contractor of answering respondent. His salary was paid by respondent no.1. The work and conduct of the workman was not satisfactory during his service. Workman had never served under responding-management. Hence, it cannot be said that the claimant/workman worked more than 240 days or his services were terminated by respondent no.2. The claim statement of the workman is not tenable in law against the answering respondent and he is not entitled for any relief.

5. Perusal of the file reveals that due to regular absence of the workman and his counsel, case was ordered to be proceeded ex parte on 24.11.2016, since then none has turned up on behalf of the workman till today. Thus, there is only claim petition as well as written statement on behalf of both the respondents and nothing is brought on record in support of the claim petition by the workman.

6. Resultantly, no claim award/no dispute award is passed against the workman. It is also clarified that passing of the no claim award would not bar the workman from approaching the Appropriate government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक फ्लोमिक फ्रेट सर्विसेज पी. लिमिटेड, मुंबई एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं. 2 मुंबई के पंचाट (संदर्भ सं. CGIT-2/60 of 2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.04.2019 को प्राप्त हुआ था।

[सं. एल–42012/29/2018–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/60 of 2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Flomic Freight Services P. Ltd., Mumbai and their workmen and others, which was received by the Central Government on 03.04.2019.

[No. L-42012/29/2018-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/60 of 2018

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. FLOMIC FREIGHT SERVICES PVT. LTD.

The Director,
M/s. Flomic Freight Services P. Ltd.,
101/102, Span Landmark,
145, Andheri Kurla Road,
Andheri [E], Mumbai – 400 093.

AND

THEIR WORKMEN

Mrs. Usha S. Thingalaya,
A/1, Vandana Mahalaxmi CHS,
Veera Desai Road,
Andheri [W],
Mumbai – 400 058

APPEARANCES:

FOR THE EMPLOYER : Absent

FOR THE WORKMEN : In Person

Mumbai, dated the 4th February, 2019

AWARD

Ref. No. CGIT-2/60 of 2018

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/29/2018 – IR (DU) dated 12.11.2018. The terms of reference given in the schedule are as follows :

> *"Whether the action of the management of M/s. Flomic Freight Services P. Ltd., Mumbai, in not making the payment of salary from 1.2.2007 to 6.3.2007 and other terminal dues amounting to Rs. 55,594/- of Smt. Usha S. Thingalaya, Accounts Assistant, after her resignation from the service on 6.3.2007 after putting in 8 years of continuous service, is just & proper ? If not, what relief the disputant workman is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. Read withdrawal pursis Ex.3. Dispute has been settled monetarily and amicably. In view of that second party workman is not interested in prosecuting the reference and hence the reference is disposed of for want of prosecution.

ORDER

Reference is disposed of for want of prosecution

Date: 04.02.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, निगम, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ सं. 36/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.03.2019 को प्राप्त हुआ था।

[सं. एल–42011/95/2011–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court-1, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Commissioner, Municipal Corporation of Delhi, Delhi and Others, and their workmen, which was received by the Central Government on 8.03.2019.

[No. L-42011/95/2011-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 36/2012

Shri Randhir S/o. Shri Jage,
Smt. Khazani W/o. Shri Hosiar Singh,
Smt. Jaleb Kaur W/o. Itwari,
Shri Daya Ram S/o. Nanu,
Smt. Laxmi W/o. Daya Ram and
Smt. Risalo W/o. Sube
through the General Secretary,
Municipal Employees' Union,
Agarwal Bhawan,
GT Road, Tis Hazari,
Delhi -110054. … Workman/Claimant

Versus

1. The Management of M/s. Municipal Corporation of Delhi,
   Through its Commissioner,
   Town Hall, Chandni Chowk,
   Delhi 110006.

2. The Management of Delhi Development Authority,
   Through its Secretary,
   Vikas Sadan, INA Market,
   New Delhi. …….Management

AWARD

This Award shall dispose of a reference which was made to this Tribunal by the appropriate Government vide its letter No. L-42011/195/ 2011-IR(DU) dated 06.02.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the Management of Municipal Corporation of Delhi (MCD), New Delhi in terminating the services of Shri Randhir & five others as per the details given in the table of the Industrial Dispute (and without considering the date of birth of each workmen, as entered in their service book maintained by DDA, before their transfer to the MCD, is just, fair and legal ? What relief the workman are entitled to and from which date ?''

2. Both parties were put to notice and the claimants/workmen filed a joint statement of claim, giving their service particulars as under :-

Sl. No.	Name Shri/ Smt.	Date of Birth	Date of appoint-ment	Date of regulari-zation	Date of retirement as per Manage-ment	Date of retire-ment as per affidavit of workman
1	Randhir	7.4.51	1968	1.8.71	30.4.2006	30/4/2011
2	Khazani	4.9.48	1966	1.8.71	30.4.2007	30/9/2008
3	Jaleb Kaur	15.3.47	1968	1.8.71	30.4.2006	30/3/2007
4	Daya Ram	4.1.50	1966	1.8.71	30.4.2003	31/1/2010
5	Laxmi	14.1.51	1968	1.8.71	30.4.2005	31/1/2011
6	Risalo	05.01.48	1966	1.8.71	30.4.2004	31/1/2008

As per averments made in the claim petition, all the workmen herein had joined into the employment of DDA and were treated as a daily wager and were paid fixed wages as per Minimum Wages Act. Their services were regularized on the dates as mentioned above in the table and due to their illiteracy they had given their respective affidavits regarding their dates of birth, which were so mentioned in the service records. In the year 1988 workmen were transferred from DDA to MCD in the year 1988 and they continuously worked with the Management. The claimants/workmen herein were lastly posted in Circle No.39-A, Najafgarh Zone, Delhi. It is pleaded that the management/MCD issued an order dated 31/7/2007 whereby the workmen were retired from services from anterior dates as mentioned in the above Table and thereby they were illegally terminated from service which is totally illegal, malafide and unjustified for the reasons *inter-*alia that date of birth entered in the service records of the workmen is conclusive proof about their age; that the Management has terminated the services of the claimants in the guise of superannuation; neither any seniority list was displayed, nor any notice/notice pay was given to the workmen; impugned termination is in violation of Section 25-F, G and H of the Act. Demand notice dated 23/9/2008 was sent to the Management but to no response. Conciliation proceedings were also initiated but to no avail due to adamant and non cooperative attitude of the Management. It is claimed that the workmen are totally unemployed since the date of their termination. The claimant has prayed for their reinstatement in service with continuity of service and with full back wages and all consequential benefits.

3. The claim petition has been resisted by the Management No.1/MCD who filed its written statement. While denying the allegations of the workmen, it has been alleged that the claimants were initially engaged as Safai Karamcharis by DDA and were regularized by DDA itself. The claimants at the time of their regularization appeared before the medical board for purpose of their mandatory medical examination before regularization as well as for determination of their age medically in absence of any authenticated document in support of their date of birth. However, error was committed by DDA by way of recording their date of birth on the basis of affidavits submitted by the claimants before DDA. It is also alleged that in the year 2007 during audit of the record, it was revealed that dates of birth recorded on the face of service book was wrong as the same was recorded by neglecting the rules as the age determined by the Medical Board/Hospital was to be recorded. In pursuance of the office record, 25 persons/officials were found to be working overstayal beyond their actual age of superannuation and as such, all the claimants/workmen were retired on completion of 60 years of service on the basis of age determined by the Medical Board, which is authenticated proof about date of birth of the claimants. Prayer has been made for dismissal of the claim petition.

4. The Management No. 2/DDA also filed written statement, stating that their does not exist relationship of employer-employee between the parties as the workmen/claimants were transferred from DDA to MCD in the year 1988 and their records *i.e.* personal files, service books and other complete records were directly transferred to the MCD. As such present dispute filed by the workmen is not maintainable against the Management/DDA. Prayer has been made for dismissal of claim petition.

5. On the pleadings of the parties, my learned Predecessor vide order dated 01/02/2013 held that no other issue than those referred for adjudication by the appropriate Government in the Reference, arose.

6. The Claimants in support of their case examined Jaleb Kaur, Randhir, Khazani and Daya Ram as WW1 to WW4 and tendered their respective affidavits Ex.WW1/A to Ex.WW4/A and relied on certain documents which I will refer while rendering my findings. Testimonies of the claimants are in line with the averments made in the claim petition.

7. On the other hand, the Management in order to rebut the case of the claimant examined Shri Jai Kishan Tank, Sanitation Superintendent of MCD who tendered his evidence by way of affidavit Ex.MW1/A and relied on documents Ex.MW1/1 to Ex.MW1/2 and Ex.WW1/M-1, Ex.WW2/M-1 and Ex.WW3/M-1.

8. I have carefully gone through the evidence adduced on record by both the parties and have give my thoughtful consideration to rival contentions of Shri Rajiv Aggarwal, A/R for the claimant and Shri Rajiv Bhardwaj, A/R for the Management.

9. It is clear from the pleading of the parties and evidence adduced on record that the claimant/workmen were originally working with DDA and they all were regularized on 1st August, 1971. The claimants/workmen were medically examined by DDA when their services were regularized, which fact is admitted to by the claimants in their cross examination. Ex.WW1/M-1 to Ex.WW4/M-1 are the medical examination of the claimants Jaleb Kaur, Randhir Singh, Khazani and Daya Ram respectively. The workmen/claimants were transferred from DDA to the establishment of MCD in the year 1988.

10. In the year 2007 during audit of the record by the Management, it was revealed that dates of birth recorded on the face of service book was wrong as the same was recorded by DDA by neglecting the rules as the age determined by the Medical Board/Hospital was to be recorded. MW1 Jai Kishan Taank, Sanitation Superintendent of MCD deposed that an error was committed by DDA by way of recording date of birth of the workmen on the basis of affidavits submitted by the claimants before the DDA authority. In absence of any authenticated documentary proof regarding date of birth of the claimants, the age disclosed by the claimants during their medical examination and observed by the Medical Officer is to be taken as the authenticated proof of age. While deposing that copies of medical reports of the claimants Jaleb Kaur, Randhir, Khazani and Daya Ram are already on record as Ex.WW1/M-1 to Ex.WW1/M-1, he also filed copies of so called medical reports in respect of age of claimants Smt. Laxmi and Risalo as Ex.MW1/1 and Ex.MW1/2.

11. It is pertinent to mention here that documents Ex.MW1/W-1 to Ex.MW1/W-5 are in fact **administrative approval** for final payments of terminal benefits to the respective claimants/workmen herein and **not the medical examination reports**. Although it has been alleged by the Management/MCD that the claimants were put to medical examination before their service record was corrected**, however no report of medical examination of these workmen/claimants herein has been filed on record**. Moreover, MW1 Jai Kishan Tank could not tell the names, designation etc. of the doctors of the Medical Board (who conducted medical examination of the claimants). He also could not tell as to which tests were conducted by the Medical Board prior to issuance of documents (Ex.MW1/W-1 to Ex.W4/W-1) *viz.* administrative approval for final payments of terminal benefits to the workmen. He admitted that except these documents, no other medical record is available with the Management.

12. Perusal of the medical reports Ex.WW1/M-1, Ex.WW2/M-1, Ex.WW3/M-1 and Ex.WW4/M-1 which has been relied upon by the Management/MCD itself and which bear signatures of Members of Medical Board, clearly show that **age as was disclosed by claimant and age according to his/her appearance (observed by the Medical Board) is the same.** These medical reports in fact support the case of the claimants/ workmen herein and do not support the case of the Management. MW1 has admitted that no notice prior to change of date of birth of the claimants/workmen in their respective service book was issued. To my mind, it was incumbent upon the Management to give opportunity to the claimants/workmen before effecting change of dates of birth in their respective service book/s. Since no opportunity was given to the workmen/claimants before changing their dates of birth in their service books, action of the Management/MCD is in complete contravention of principles of natural justice. Furthermore, same is without any cogent basis. It is undisputed fact that the workmen/claimants have been retired prematurely from the date of their actual retirement as detailed hereinbelow:-

Sl.No.	Name of workmen Shri/Ms..	Date of Birth as per affidavit and as per service book	Date when the workmen were retired by MCD	Date of actual retirement as per original service book
1	Randhir	7.4.51	30.4.2006	30/4/2011
2	Khazani	4.9.48	30.4.2007	30/9/2008
3	Jaleb Kaur	15.3.47	30.4.2006	30/3/2007
4	Daya Ram	4.1.50	30.4.2003	31/1/2010
5	Laxmi	14.1.51	30.4.2005	31/1/2011
6	Risalo	05.01.48	30.4.2004	31/1/2008

Consequently, action of the Management in pre-maturely retiring the workmen/claimants before actual date/s of their retirement is held to be arbitrary, perverse and illegal.

Relief :-

As a corollary to the discussion as held above, the question arises for consideration as to what relief the claimants/workmen herein are entitled to. It is not in dispute that terminal/service benefits were granted to the claimants/ workmen consequent upon their forced retirement. The claimants in their respective testimonies have deposed that they are unemployed since the date of their forced non-employment/retirement. The Management has not led any evidence to show that the workmen are/were gainfully employed. Since the workmen/claimants were not at fault when they were given forced retirement by the Management, this Tribunal is of firm view that ends of justice will meet if the Management is directed to treat the workmen in service till they were to attain their age of superannuation, as per dates of birth mentioned in their respective service book/s originally maintained by Management No.2/DDA. Management is also directed to give them all monetary/pecuniary benefits including salary/wages, promotional benefits and arrears of pension. It is made clear that while computing benefits of salary/wages, pension amount already paid to the claimants/workmen shall stand adjusted. Award is passed accordingly.

Date : 6.3.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, दिल्ली नगर निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ सं. 302/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.03.2019 को प्राप्त हुआ था।

[सं. एल–42011/78/2011–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 302/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court-*1, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Commissioner, Municipal Corporation of Delhi, Delhi New Delhi and Others, and their workmen which were received by the Central Government on 18.03.2019.

[No. L-42011/78/2011-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 302/2011

Shri Pappu S/o. Shri Puran,
Ex Nala Beldar,
Through Municipal Employees' Union,
Agarwal Bhawan,
GT Road, Tis Hazari,
Delhi -110054. … Workman/Claimant

Versus

The Management of Municipal Corporation of Delhi,
Through its Commissioner,
Town Hall, Chandni Chowk,
Delhi 110006.
Now at Dr.S.P. Mukherjee Marg,
Civic Centre, JL Nehru Marg,
New Delhi 110002. …Management

AWARD

This Award shall dispose of a reference which was made to this Tribunal by the appropriate Government vide its letter No. L-42011/78/ 2011-IR(DU) dated 12.08.2011 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> ''Whether the action of the Management of Municipal Corporation of Delhi in terminating the services of Shri Pappu s/op. Shri Puran, Ex Nala Beldar *w.e.f.* 30/4/2009 is legal and justified ? What relief the workman is entitled to and from which date ?''

2. Both parties were put to notice and the claimant/workman filed statement of claim, with the averments that the workman joined into the employment of Management/MCD *w.e.f.* October, 2003 as a Nala Beldar and initially he was posted in Ward No. 24 Raghubir Nagar, Tagore Garden, New Delhi and in October, 2007 he was transferred to Ward No.102, Raghubir Nagar, West Zone, Delhi. He was being treated as a daily rated/muster roll worker and was being paid fixed wages, as revised from time to time under Minimum Wages Act, whereas his other counterparts who were doing the identical work of the same value, were treated as regular employees and were paid salary in proper pay-scale. The workman was discharging his duties to the entire satisfaction of his superiors and was having unblemished & uninterrupted record of service to his credit. It is pleaded that medical examination of the workman was also got

conducted by the Management in 2009. It is also pleaded that though the Management should have regularized services of the claimant/workman, but the Management terminated his services *w.e.f.* 30/4/2009 without assigning any reason and without following the principle of natural justice, which action of the Management is totally illegal, unjust and bad inasmuch as no notice or service compensation was offered or paid to him at the time of termination of his services. It is also pleaded that the Management had prepared a list of 175 Nos. of muster roll employees of West Zone and out of them 173 workers have been regularized and remaining two including the workman were totally ignored. The impugned termination of the workman is violative of Section 25-F, G and H of the Act and even fresh hands have also been taken into employment by the Management. A demand notice dated 9/6/2010 was issued to the Management but to no response. The workman approached the Conciliation Officer but to no effect. Prayer has been made for reinstatement of the workman with continuity of service and full back wages. He has also prayed for grant of cost of litigation as provided under Section 11(7) of the Act.

2. The claim petition has been resisted by the Management No.1/MCD who filed its written statement. While denying the allegations of the workmen, it has been alleged that the workman was engaged for specific work and for a particular period in exigency of work after due approval from the competent authority. While admitting that the workman was enrolled *w.e.f.* 16/11/2003 on the muster roll and worked upto 3/4/2009, it has been alleged that the workman left the work and stopped coming to office w.e.f. 15/4/2009 without any prior intimation and as such he himself abandoned the job. It has been stated that the workmen who joined the Management upto 31/3/2003 were regularized. It has been claimed that no notice is required in the case of daily wage workers. Prayer has been made for dismissal of the claim petition with costs.

3. On the pleadings of the parties, my learned Predecessor vide order dated 09/12/2011 framed following issues :-

(1) Whether the claimant abandoned his job w.e.f. 15/4/2009 ? If yes, its effect?

(2) As in terms of referece ?

(3) Relief.

4. The Claimant/workman in support of his case examined himself as WW1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to Ex.WW1/23. On the other hand, the Management in order to rebut the case of the claimant examined Shri Ajay Gautam, Executive Engineer who also tendered his affidavit Ex.MW1/A.

5. I have carefully gone through the evidence adduced on record by both the parties and have given my thoughtful consideration to rival contentions of Shri Rajiv Aggarwal, A/R for the claimant and Shri Rajiv Bhardwaj, A/R for the Management. My findings on the above issues are as follows.

Issue No. 1 and 2 :-

6. Both these issues are taken up together as the same can be conveniently disposed of by common discussion.

7. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

8. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the Management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings *i.e.* statement of claim filed by the claimant. The claimant has filed on record copy of the identity card (Ex.WW1/18) wherein his designation has been shown as Nala Belder and he has been described as Muster Roll worker. WW1/19, WW1/20 and WW1/24 are the certificates of attendance/attendance sheets. Document Ex.MW1/W-1 clearly shows that the workman/claimant Pappu regularly & continuously worked with the Management from 1st April, 2004 to 14/11/2008 and his attendance in a month was almost full, if weekly off & gazette Holidays are taken into consideration. Thus, It is evident from the pleading of the parties and evidence adduced on record that the claimant/workman had joined the Management in October/November, 2003 as Nala Beldar on daily rate/muster roll basis and he continuously worked with the Management till April, 2009. It emerges that the workman/claimant continued to work with the Management for about six years on daily wage/muster roll basis. It would not be out of place to mention here that although the Management has taken a plea that the workman was engaged for specific work and for a particular period in exigency of work after due approval from the competent authority, however the Management has not produced any document to substantiate this plea. I may mention that the employment under the Municipal Corporation of Delhi was not a private employment and the Corporation being a statutory body was liable to produce documents in support of its contention and non production of the relevant documents leads this Tribunal to draw adverse inference against the Management and to hold that the employment/engagement of the claimant/workman was not for specific period. Therefore, it stands clearly proved on record that the claimant was engaged as Nala Beldar

by the Management on daily wage./muster roll basis and as such, to my mind, the claimant is a "workman" within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as Nala Beldar stands established and as such this Tribunal has no hesitation to hold that there existed relationship of Employer-employee between the Management and the claimant herein and that the claimant had been working with the Management for about six years prior to his alleged termination on 30/4/2009. It may not be out of place to mention here that according to the claimant he worked upto 30/4/2009, whereas contention of the Management is that he worked only upto 15/4/2009 when he himself had abandoned the job. The claimant has filed on record documents Ex.WW1/5 and Ex.WW1/6 viz. check list and medical examination report containing his particulars and photograph and same is dated 28/4/2009. The Management has not led any evidence to show that the documents Ex.WW1/5 and Ex.WW1/6 are fake and forged one. In the face of these documents Ex.WW1/5 and Ex.WW1/6, the contention of the Management that the claimant himself abandoned the job on 15/4/2009 stands belied, rather version of the claimant/workman that he worked with the Management till 30/4/2009 when his services were terminated without any reason, is plausible. Even if it is assumed for the sake of arguments that the claimant/work absented from the job *w.e.f.* 15/4/2009 onwards and had abandoned the job himself, in that eventuality it was moral and legal duty of the Management to issue call back notice to the claimant. MW1 Shri Ajay Gautam – sole witness examined by the Management has admitted in his cross examination that no notice pay or service compensation was given or offered to the claimant before deleting his name from the muster roll of the Management. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

11. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

12. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

13. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman *w.e.f.* 25/1/2012 is held to be illegal and void.

14. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the Management since 05/01/2007. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as Nala Beldar is considered to be of perennial and regular nature. Though claimant has pleaded that he is totally unemployed since his termination on 30/4/2009, however he admitted in his cross examination that he is working as a daily wager and gets job for 15 to 20 days in a month. He has clarified that he is working with Santosh Tent House at Sultanpuri and his services are engaged by the said Tent House as and when they had to perform ceremonies/functions in marriages. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be his regular gainful employment. The Management has not adduced any evidence to show that the claimant is virtually gainfully employed.

15. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

16. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

17. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

18. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

19. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.
>
> Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

20. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 60 per cent back wages, iinasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management. The claimant/workman is also granted litigation costs of Rs.10,000/- (Rupees Ten Thousand only) as provided under Section 11(7) of the Act and same shall also be paid by the Management. Award is passed accordingly.

Date : 02.04.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, दक्षिणी दिल्ली नगर निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ सं. 10/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.03.2019 को प्राप्त हुआ था।

[सं. एल–42011/110/2016–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*-1, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Commissioner, South Delhi Municipal Corporation of Delhi, New Delhi and Others, and their workmen, which were received by the Central Government on 18.03.2019.

[No. L-42011/110/2016-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 10/2017

Shri Dheer Singh,
Through MCD General Mazdoor Union,
Room No. 95, Barrack No. 1/10,
Jam Nagar House,
New Delhi - 110 011 …Workman

Versus

The Commissioner (South),
South Delhi Municipal Corporation,
9th Floor, Civic Centre,
Shyama Prasad Mukherjee Marg,
Minto Road,
New delhi – 110 002 …Management

AWARD

Consequent upon receipt of reference from the Ministry of labour and Employment vide letter No .L-42011/110/2016/IR(DU) dated 15.12.2016/27.12.2016 under clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this Tribunal is required to adjudicate the following industrial dispute:

> 'Whether Shri Dheer Singh, who was performing the duty of action Chaudhary with effect from 01.01.1991 to December 2001 and Section officer with effect from 17.10.2008 is entitled for wages in the pay scale attached to the posts? If not, what relief the workman is entitled?'

2. Claim statement was filed by Shri Dheer Singh (in short the claimant) with the averments that he has been performing duties of acting Chaudhary with effect from 01.01.1991 to 31.12.2001 and later on with effect from 17.10.2008, he has been performing duties as Section Officer and is presently posted in Central Zone. Though he was performing duties of acting Chaudhary, yet he was deprived of the wages of a Chaudhary and was paid wages of mali. Further, he was assigned look after charge to the post of Section Officer(Horticulture) and was called current charge without payment of Grade/pay scale of Section Officer. This terminology is only a means to exploit the workers who are performing duties in higher post and amounts to unfair labour practice. Shri Dheer Singh has not been granted wages of Section Officer though 20% posts are marked for promotion from Technical Supervisor/Chaudhary in the Grade of Section Officer. Finally it has been prayed that Shri Dheer Singh may be awarded wages of Acting Chaudhary with effect from 01.01.1991 to December 2001, Wages of Section Officer (Horticulture) with effect from 17.10.2008 till date and also post of regular Section Officer from 17.10.2008 as he is B.Sc. (Agriculture) and comes within the ambit of promotional quota of 20% fixed for Chaudhary.

3. Matter was contested by the management, who filed written statement wherein several preliminary objections were taken, such as non-services of demand notice, delay & laches etc. However, it has been admitted that the claimant was initially engaged on the post of mali on 01.04.1989 and cannot be promoted to the post of Garden Chaudhary and no such office order was issued by the competent authority. The claimant was promoted to the post of Technical Supervisor on adhoc basis for one year vide memo No.DOH/ADH/HQ/2001/1706 dated 07.12.2001. Thereafter the claimant was promoted. On the basis of order No.ADC/AO(Hort)/2008/314 dated 05.09.2008 post of Technical Supervisor (Horticulture) was merged with the post of Chaudhary. The claimant thereafter was to look after charge of Section Officer as mentioned in office order No.ADC/AO(Hort,.)/DA-II/2008/455 dated 17.10.2008. The same order is running.. However, the claimant is merely looking after the charge, he cannot claim benefits on account of such arrangement on the basis of terms & conditions mentioned therein. Management has denied the other material averments contained in the statement of claim.

4. Claimant filed rejoinder to the written statement filed by the management, reasserting the stand taken by him in his statement of claim.

Against this factual backdrop, this Tribunal on the basis of pleadings of the parties, following issues were framed:

(i) Whether the claim is not legally maintainable in view of the various preliminary objections?

(ii) In terms of reference

5. Claimant, in order to prove the case against the management, examined himself as WW1 and his affidavit is Ex.WW1/A. He relied on documents Ex.WW1/1 to Ex.WW1/5. Management, in order to rebut the case of the claimant, examined Shri Sahender Pal Singh, Assistant Director (Horticulture) as MW1, whose affidavit is Ex.MW1/A and he relied on documents Ex.MW1/1 to Ex. MW1/3.

6. I have heard Shri B.K. Prasad, A/R for the claimant and Ms.Savita Chauhan, A/R for the management.

Findings on Issue No.1

7. It is clear from written statement filed by the management that management has specifically taken the point that no demand notice has been served upon the management, as such, present dispute is not an industrial dispute and the case filed by the claimant is without any cause of action. So far as plea of the management regarding cause of action is concerned, this Tribunal is of the firm view that the claim is certainly legally enforceable cause of action against the management as the claimant is claiming grant of equal pay for equal work as he has performed duties as Section Officer though he was initially appointed only as mali on daily wages. Relationship of employer and employee between the parties has been fairly proved even from the pleadings of the parties. Management, in its reply, has admitted in para 2 that the claimant was initially engaged on the post of mali. Even in the other paras, stand of the management that the claimant was promoted to the post of Garden Chaudhary following due process as per existing RRs. It is further admitted by the management in para 5 of the written statement that he was assigned charge of Section Officer (Horticulture) on look after basis. This, it cannot be said that prima facie the claimant herein does not have cause of action against the management, particularly when he was admittedly performing duties and functions of Section Officer (Horticulture) and drawing salary of only mali.

Findings on Issue No.2

8. The moot question which arises for consideration before this Tribunal is whether the claimant is entitled to regularized on the pay scale of Acting Chaudhary with effect from 01.01.1991 to December 2001 and Section Officer in the regular category with effect from 17.10.2008 onwards with all consequential benefits. It is neither in doubt nor in dispute that the claimant was initially appointed as mali. During the course of arguments, it was not denied even by the learned A/R for the management that the claimant is B.Sc. Agriculture and such candidates are duly eligible for the post of Section Officer. .

9. During the course of arguments, learned A/R for the claimant has specifically referred to the office order dated 28.08.2001 Ex.WW1/1 which is information regarding acting Chaudharies in South Zone and name of the claimant Shri Dheer Singh is serial no.19. Letter Ex.WW1/2 (colly) shows the names of chaudharies who were assigned the work of Section Officer on look after basis and name of the claimant in the said list is at serial No.7 in office order dated 17.10.2008, at serial No.6 in office order dated 05.05.2010, serial No.8 in office order dated 16.11.2011 and at serial No.5 in Office order dated 22.10.2014.

10. During the course of arguments, attention of the court was invited by the learned A/R for the claimant to the case of Randhir Singh vs. Union of India FLR 1982 (44) 299. It was a case where question of equal pay for equal work was considered in respect of driver constables in Delhi Police. Drivers in the police department were demanding the same pay scale which was being given to other drivers under the services of Delhi Administration. Claim was upheld by the Hon'ble Apex court as under:

> 'Held, the circumstances that the persons belonged to different departments of the government is not sufficient to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. If anything by reason of his investiture with the powers, functions and privileges of a police officer, the petitioner's duties and responsibilities were more arduous. The answer of the respondents that the drivers of the police force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the courts may recognize and act upon is unsound and irrational. The writ petition was, therefore, allowed. The respondents were directed to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force, atleast at par with that of the drivers of the Railway Protection Force with effect from January 1, 1973.'

11. Same view has been taken in a latest judgement of the Hon'ble Apex Court in State of Punjab Vs. Jagjit Singh (2017) Lab.I.C. 427 whereby while considering concept of 'Equal pay for equal work', it was observed as under:

> The principle of 'equal pay for equal work' can be extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a

domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

It is therefore held that Shri Dheer Singh, the claimant herein, is entitled to the pay scale and all allowances except increment with effect from 01.01.1991 to December 2001, i.e. difference in the pay scale of mali and Garden Chaudhary and with effect from 17.10.2008, i.e. difference in the pay scale of mali and Section Officer, as per policy of 'Equal Pay for Equal Work'. Further, Shri Dheer Singh is entitled for regularization in the pay scale of Section Officer in regularized category with effect from 17.10.2008 onwards with all consequential benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : 7.3.2019

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, एमसीडी (उत्तर) नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, नई दिल्ली के पंचाट (संदर्भ सं. 12/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.03.2019 को प्राप्त हुआ था।

[सं. एल–42012/131/2013–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court-2,* New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Commissioner, MCD (North), New Delhi and Others, and their workmen which were received by the Central Government on 21.03.2019.

[No. L-42012/131/2013-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 12/2014

Date of Passing Award- 11th February, 2019

Between :

Shri Ramji Lal,
S/o. Shri Kanhaiya Lal,
R/o. B-648, Madipur Colony,
Delhi-110063. …Workman

Versus

The Commissioner,
MCD (North), Civic Centre, Minto Road,
New Delhi- …Management

Appearances:-

None for the claimant Advocate For the Workman

Shri Vivek Chandra, Advocate For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of MCD (North), Civic Centre, Minto Road, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/131/2013 (IR(DU) dated 10.02.2014 to this tribunal for adjudication to the following effect.

"Whether the action of management of Municipal Corporation of Delhi (North) in terminating the services of Shri Ramji Lal S/o. Sh. Kanhaiya Lal, Ex-Beldar w.e.f 20.12.2000 and not reinstating him after his acquittal from competent court with consequential benefits is justified or not? If not what relief will be given to the workman and from which date?"

The workman filed a claim petition stating that he was working as a Beldar in Municipal Corporation of Delhi since 1998. On 20.12.2000 a false charge was leveled against him alleging illegal gratification from the trucks and tempo drivers entering Delhi Jurisdiction from Haryana in order to allow them a free entry. On such allegation the management terminated his job without issuing any chargesheet, showcause notice or termination notice. A police case was made and charge sheet was submitted against him u/s 7 and 13 of the prevention of corruption Act 1998 read with section 120 B of the IPC 1860. He had to face the trial for 9 long years which ultimately ended in his acquittal. Thereafter the workman approached the management for his reinstatement in service. Since the management did not pay any heed he approached the Labour Commissioner alleging unfair labour practice. The conciliation being failed the appropriate government referred the matter to this Tribunal.

The workman has further allege the he had completed 240 days of work in a calendar year and on that ground his service need to be regularized. Not only that the management is guilty of not following the procedure of ID Act in terminating his service. Hence, he has prayed for reinstatement.

The management filed written statement rebutting the stand of the workman it has been stated in the written statement that the claimant was a Daily Wager, Muster Roll, Beldar and was disengagement on account of misconduct. There being no appointment his service need not be terminated following the procedure of 25-F ID Act. It is the further stand of the management that the workman being a daily wager has not right to be reinstated permanently and against a regular post.

On this rival pleading the following issues were framed to be answered.

ISSUES

1. If the termination of the workman by the management is illegal and he is entitled to reinstatement after acquittal for a criminal charge.
2. To what relief the workman is entitled to and from which date.

When the matter was adjourned to 26.09.16 for evidence to be adduced by the workman, the said workman filed a petition u/s 11(3) of the ID Act. Praying a direction to the management for production of certain documents. That petition was allowed by order dated 08.05.2017 and the management was directed to produce either the original or certified true copies of the document, reserving the right of the workman to adduce secondary evidence on the event of failure by the management to comply the order.

From the chronologically maintained order sheet it appears that since 29.05.2017 till date the workman is not attending the court though the A/R for the management is attending the court regularly.

The workman in order to prove the claim has neither adduced oral or documentary evidence. It is a rule of adjudication that the party asserting existence of the particular fact need to prove the same by oral or documentary evidence which may be disproved by the adversary. In this proceeding though the workman has filed the copy of the judgment of acquittal passed in his favour, there is absolutely no evidence to prove the allegation leveled against the management by him. The workman has thus, failed to substantiate his claim.

That being the factual position this tribunal has no other option than dismissing the claim and passing a no claim award.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य कार्यकारी अधिकारी छावनी बोर्ड, देहरादून कैंट, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, नई दिल्ली के पंचाट (संदर्भ सं. 22/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.03.2019 को प्राप्त हुआ था।

[सं. एल–13012/02/2017–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court-2,* New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Chief Executive Officer, Cantonment Bard, Dehradun Cantt., Dehradun and Others, and their workmen which were received by the Central Government on 21.03.2019.

[No. L-13012/02/2017-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present : Smt. Pranita Mohanty

ID. No. 22/17

Shri Kailash Chand S/o Shri Shricahnd,
C/o Shri Mukesh Saxena, 5/3 Canal Road,
Kishanpur, Dehradun. …Workman

Versus

Chief Executive Officer,
Cantonment Board, Dehradun Cantt,
Dehradun. …Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.13012/02/2017 (IR(DU)) dated 06.06.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

"Whether the action of management of Cantonment Board, Dehradun in terminating the services of the workman Shri Kailash Chand S/o Shrichand is illegal & unjustified, if so then what relief he is entitled to ?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिल्ली इंटरनेशनल एयरपोर्ट प्रा. लिमिटेड नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, नई दिल्ली के पंचाट (संदर्भ सं. 35/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.03.2019 को प्राप्त हुआ था।

[सं. एल–42025/03/2019–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court-2,* New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Delhi Internatinal Airport Pvt. Ltd. New Delhi and Others, and their workmen which were received by the Central Government on 21.03.2019.

[No. L-42025/03/2019-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present : Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 35/2016

Date of Passing Award- 13th February, 2019.

Between :

Shri Rampal,
S/o Shri Chandrapal,
Hindustan Engineering and General Majdoor Union (Reg. 4479) …Workman

Head Office : D-2/24, Sultanpuri, Delhi.

Versus

1. M/s. Delhi International Airport Pvt. Ltd. …Managements
   Terminal No.3, IGI Airport, New Delhi-37.
2. M/s. Avon Facility Management Services Ltd.
   B-1/1-1, First Floor, Mohan Cooperative
   Industrial Estate New Delhi-44.
3. M/s. Updater Services Ltd.
   212, First Floor, Okhla Industrial
   Area Phase-3 New Delhi-20.

Appearances :

Shri Kailash Kumar Advocate — For the Workman.

Shri Digvijay Rai & Chetna Rai Advocate — For the Management.

AWARD

This is an application filed by the workman/claimant invoking the jurisdiction of this tribunal u/s 2-A of the ID Act. Praying the relief of reinstatement alongwith back wages by management No. 1.

The facts alleged by the workman/claimant is that he was engaged in the service of management No. 1 i.e. DIAL in the year 2010. At the time of induction to work, he was not given an appointment letter. The Management No. 1 directed him to work under management No. 2 and 3 who were having contract for work with the management No. 1. But workman was under the direct employment of management No. 1, since the said management had no registration under the contract labour abolition act 1970 for engagement of person through contractor. Not only that the contractors i.e. management No. 2 and 3 had no license for engaging labourers. The workman was often alleging and demanding payment of equal wage other benefits like PF, ESI earned leave etc. The grievance of the workman since was not considered by the management No. 1, on 26.10.2013 he made a general demand alongwith other employees before The Labour Commissioner. The management gave reply on 28.08.2014 after which a conciliation proceeding started. Though the management no. 1 participated, the conciliation failed. The conciliation officer submitted a failure report. While the matter stood thus on 1.09.2013 the management No. 3 transferred the service of the workman to management No. 2 and no transfer order was handed over. However, the workman reported for a duty with management No. 2. On 18.09.2014 a domestic enquiry was conducted against the workman. He appeared and demanded documents In support of the allegation. Instead of providing him documents the management No. 2 closed the enquiry on the same day and on 30.10.2014 by serving a letter on him his service was terminated.

At the time of such termination neither the workman was served with a notice of termination nor any termination compensation was paid to him. Hence by filing this petition he has prayed for reinstatement of service with back wages.

Being noticed management No. 1 appeared and filed a written statement denying its relationship as employer with the workman. It took a plea that the management No. 1 is a Pvt. Ltd., company and a lessee of the IGI Airport Delhi. For operation and the management of the airport the company has engaged several contractors who have their own employees to carry out the work as per the contract. No salary was ever paid by management No. 1 to the workman nor was any appointment letter issued. By filing the agreement executed between management No.1 and management No 2 and 3separely this management No. 1 prayed for deletion of its name from the proceeding.

Management No. 2 and 3 on receipt of notice appeared and filed separate written statement. The management No. 3 stated that the contention of the claim petition is all false. His specific stand is that at the time of alleged termination the workman was not the employee of management No. 3 nor any termination order was passed at his instance.

Management No.2 has stated that the workman was working under him and engaged in IGI Airport Delhi. But he was found involved in illegal unruly activities for which a chargesheet was served on him on 08.08.2014. The reply submitted by the workman was not found satisfactory. Hence, the enquiring officer scheduled the enquiry to 17.09.2014 and the workman was asked to report for work. When he did not turn up to join the duty, for the illegal activities order was passed discharging him from service by letter dated 30.10.2014. The other plea of management No. 2 is that no illegality has been committed for passing the order. Thereby he prayed for rejection of the prayer.

On the rival pleading of the parties

ISSUES

1. Whether the claim of the claimant is maintainable in view of various preliminary objections?
2. Whether the termination of the claimant is unjust, illegal and against the principles of natural justice.
3. Whether the claimant is entitled for reinstatement in service alongwith back wages?
4. Relief.

When the matter was fixed for evidence to be adduced by the workman he failed to attend the court proceeding. Several adjournments were allowed for his appearance and examination as a witness. At last the A/R for the workman on 18.12.2018 informed that despite repeated effort he is not able to establish contact with the claimant. The evidence for the workman was thus closed. The management No. 1,2 and 3 did not wish to adduce any oral or documentary evidence.

It is a decided principle of adjudication that a person asserting existence of the particular fact need to prove the same by oral or documentary evidence. In this proceeding though the workman has alleged about illegal termination and sought for the relief of the reinstatement and back wages, he failed to substantiate or prove the same. In absence of evidence to prove the pleadings this tribunal is left with no option than dismissing the claim petition filed under 2-A of the Industrial Dispute Act by passing this no claim award. Hence, ordered.

ORDER

The claim petition be and the same is dismissed for want of proof and a no claim award is hereby passed. Consign the record to the record room.

This reference is accordingly answered.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पावर ग्रिड कॉर्पोरेशन ऑफ इंडिया लिमिटेड, गाजियाबाद (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, नई दिल्ली के पंचाट (संदर्भ सं. 72/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.03.2019 को प्राप्त हुआ था।

[सं. एल–42012/93/2011–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 72/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*-2, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Power Grid Corporation of India Ltd., Ghaziabad (U.P.) and Others, and their workmen which were received by the Central Government on 21.03.2019.

[No. L-42012/93/2011-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present : Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 72/2012

Date of Passing Award- 7th February, 2019.

Between :

Shri Udai Pal,
S/o- Shri Khili Ram,
R/o- Village Daurabanjarpur,
Po:- khas,
U.P.
Ghaziabad(U.P). …Workman

Versus

Power Grid Corporation of India Ltd.,
Nanu Mandola,
U.P.
Ghaziabad (U.P). … Management

Appearances :

None for the workman, Advocate For the Workman.

Shri Jitender Yadav, For the Management.

Shri Ramesh Jerath, Advocates

AWARD

The Government of India in Ministry of Labour and Employment has referred the present dispute existing between employer i.e. the management Power Grid Corporation of India Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/93/2011(IR(DU) dated 03.02.2012 to this tribunal for adjudication to the following effect.

"Whether the action of the management of PGCIL in terminating the services of Shri Udai Pal S/o Shri Khiliram w.e.f 17/5/1994, is legal and justified? What relief the workman is entitled to?

The claimant workman filed a claim statement stating that he was working with the management since 01.01.1992 as a permanent peon. He had an unblemished service record with the management. On 17.05.1994 when he went to report for duty the management did not allowing him to work. When asked the reason the management also refused to assign any reason for the same. The demand made by the workman for a written order of termination was also turned down by the management. Inspite of repeated demand made by the workman for reinstatement the management took no action. Finding no other way the workman approached the Assistant Labour Commissioner Ghaziabad and on the basis of his claim a conciliation proceeding was initiated. But no fruitful purpose could be served and the assistant Labour commissioner submitted a failure report following which the appropriate government made the present reference. The further stand of the workman is that the management at the time of termination did not follow the procedure laid down u/s 25-F of the ID Act 1947. Neither the notice of termination was served nor notice pay was paid to him. He was not even paid termination compensation. With such allegation, the workman has prayed that he be reinstated to service with all back wages since he has not been gainfully employed in the meantime.

Being noticed the 2nd party management appeared and filed the written statement. In the said statement the maintainability of the proceeding has been challenged. While denying any employer and employee relationship between the workman and the management, the later, in the written statement has alleged that this claimant was a contractor working under the management and the proceeding is not maintainable. Thereby the management has alleged that all the allegation made by the workman are false and frivolous.

By filing a rejoinder the workman stated that he was employed by the management following all the procedure and since 01.01.1992 to 16.05.1994 he was in a continuous duty of the management. The management is wrongly describing him as a contractor.

On this rival pleading the following issues are framed.

ISSUES

1. Whether there exists relationship of employee and employer between the parties?
2. Whether delay of 18 years in filing of claim frustrates the relief:
3. As in terms of reference.

When the matter was adjourned for hearing, the claimant filed an application seeking production of some documents by the management. In the meantime the management also filed an application praying for hearing of preliminary issue relating to employer and employee relationship between the parties. After inviting the objection by order dated 01.02.2017 this tribunal rejected both the petitions i.e. the petition by the workman for calling certain documents and application by the management for hearing issue no. 1 as a preliminary issue. Thereafter the matter was adjourned for workman evidence. The order dated 15.01.2018 shows that a last opportunity was afforded to the workman for adducing evidence. Thereafter several adjournments were made for recording of the evidence by the claimant. Since the claimant did not avail the same, of 02nd Aug 2018, this tribunal passed an order against the workman to be proceeded ex-parte. Opportunity was given to the management for adducing evidence. Since, the management did not adduce any evidence argument was heard.

From the claim statement and the written statement filed by the management it is found that the relationship between the workman and the management has been disputed. The workman failed to substantiate his relationship with the management. There is no oral or documentary evidence adduced by the workman in this regard. Hence, having no material to accept the claim of the workman it is held that the claim of the workman has failed. No award can be passed nor can any relief be granted to him as per his prayer. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. The reference is answered accordingly. Consign the record.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2019

का.आ. 631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गर्ल्स हॉस्टल जामिया मिलिया इस्लामिया, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ सं. 66/2016 और 263/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.04.2019 को प्राप्त हुआ था।

[सं. एल–42011/223/2014–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 10th April, 2019

S.O. 631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2016 & 263/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to The Girl Hostel Jamia Milia Islamia, New Delhi and Others, and their workmen which were received by the Central Government on 08.04.2019.

[No. L-42011/223/2014-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, DWARKA COURTS COMPLEX : NEW DELHI.

ID No. ID No.66/2016 and ID No. 263/2015

Ms. Aliya Mukhtar d/o. late Shri Mukhtar Ahmed Khan,
r/o. 382/223, Gali No.5, Guffar Manzil, Jamia Nagar, New Delhi
Through Delhi Karamchari Sangh (Regd.),
W-4, in front of Kalkaji Bus Depot,
Govind Puri,
New Delhi 110019. …Workman/Claimant

Versus

1. M/s Girls Hostel Jamia Milia Islamia,
Jamia Nagar,
New Delhi 110025.

2. M/s KMS Enterprises,
80-A Bharat Nagar, New Friends Colony,
New Delhi 110065 ….Managements

AWARD

A reference was made to this Tribunal by the appropriate Government vide letter No. L-42011/223/2014-IR(DU) dated 7th January, 2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether Ms. Aliya Mukhtar d/o. Mukhtar Ahmed Khan have been terminated illegally and unjustifiably by the managements or she has abandoned the job and to what relief is the workman entitled and what directions are necessary in this respect ?

2. Both parties were put to notice and the claimant/workman Alia Mukhtar filed statement of claim, with the averments that she was appointed by the Management No.1 through Management No.2 in August, 2005 for the post of Caretaker and her last drawn wages were Rs.9775/- per month. The Management No.1 or Management No.2 had not issued any letter of appointment in her favour. She did not give any chance of complaint to the Management and his service record was well satisfactory. During the course of employment, the workman regularly demanded to the Management no.1 and Management No.2 to provide legal/lawful facilities like Overtime, Leave with wages, Bonus, Annual increment, DA, HRA, Pay slip etc to him but the same were not provided. The Management No.2 is the contractor of Management Nao.1 and workman has worked under the control & supervision of Management No.1 but the Management No.2 used to pay wages to the workman. The Managements started to get rid of workman but failed and on 10/7/2014 **the management No.2 illegally terminated his services, on the direction of Management No.1, without any rhyme or reason** and without paying any service compensation or without conducting any domestic enquiry against him. Demand notice was sent to the Management by the workman/claimant through speed post on 10/9/2014 but the managements despite service neither reinstated him nor gave reply to the demand notice. It is pleaded that the juniors are still working with the Managements and at the time of termination, Management did not pay service compensation to the workman and thus, violated the provisions of Section 25-F and 25-G of the Act. The workman has worked with the Management continuously for more than 240 days in the preceding year. The workman neither absented from the services nor resigned himself. The workman/claimant approached the Conciliation Officer but to no avail. It is also pleaded that after illegal termination from service, the workman searched for the job at many places but she did not find any work and she is completely unemployed and she wants to join duty with the Managements on the same post with full back wages. The claimant has prayed for his reinstatement in service with continuity of service and with full back wages and all other consequential benefits.

3. On the same lines, a claim petition was directly filed by the claimant under Section 2-A of the Act which was registered as ID No. 263/2015. Vide order dated 11/4/2015, the dispute raised by the claimant was tagged with the reference for all purposes. Issues were framed in IDNo.66/2015 and evidence was also recorded in the said case.

4. The claim petition has been resisted by the Management no.1 who filed its reply/written statement and took preliminary objections inter-alia that claimant is not the workman as defined under Section 2(S) of the Act and in fact there is no privity of contract between the claimant and the Management No.1. It has been denied that workman was appointed by Management No.2 through Management No.2 as a caretaker. It is alleged that the workman /claimant was never employed by Management No.1. It is stated that statement of claim is devoid of merits and same is liable to be dismissed.

5. Management No.2 also filed its written statement, stating that the workman/claimant was appointed by Management No.2 after receiving application/bio-data for the post of Bearer w.e.f.1st October, 2009 and an agreement between the claimant & the Management No.2 was executed. It is alleged that the workman was never terminated rather she left the job without informing the Management No.2 and was absent from duty from 16/5/2014 and she received her salary upto 31/5/2014. It is also alleged that the as per agreement, the workman can be transferred to another location. Management was ready to take her back on duties at Head office but the workman refused to join. Prayer has been made for dismissal of the claim petition.

6. The claimant/workman filed rejoinders wherein she denied all the allegations made by the Managements and reiterated her own case as set up in the claim petition.

7. On the pleadings of the parties, following issues were framed on 2/9/2016 :-

i) Whether the claim is not legally maintainable in view of the various preliminary objections ?

ii) As in terms of reference ?

8. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/3.

9. On the other hand, the Management No.1 in order to rebut the case of the claimant examined one Shri Abbas Raza Naqvi, Registrar (Estt.Section) in Jamia Milia as MW1 who tendered his evidence by way of affidavit Ex.MW1/A, whereas Management No.2 examined Shri Kailash Bhatt, Manager who also tendered his evidence by way of affidavit Ex.MW2/A and rely on the document Ex.MW2/1.

10. I have carefully gone through the evidence adduced on record by both the parties and have give my thoughtful consideration to rival contentions of authorised representatives of the parties.

Issue No.1 and 2 :-

11. Both these issues are taken up together as they can be disposed of by common discussion.

12. The affidavit Ex.WW1/A filed by the claimant is in line with the averments made in the claim petition. As per the pleadings of the parties, the claimant was appointed by Management No.2 M/s KMS Enterprises, whereas she worked with the Management No.1. In cross-examination conducted on behalf of the Management No.1, the claimant/workman WW1 admitted that she had not applied for the post in the Management and she was neither issued any interview letter or letter of appointment, nor she was issued any salary slip by Management No.1. She also conceded that she worked with Jamia through Management No.2. She deposed that she was virtually terminated by both the Managements. It appears that the claimant has not come to the Court with clean hands and has not disclosed true facts as to who was her employer and to which post she was initially engaged. The version of claimant that she was appointed to the post of **Caretaker** in the month of August, 2005 is belied from the document/identity card Ex.WW1/11 (for the year 2007-08) wherein her designation has been described as **"Bearer".** However**, in the** identity card Ex.WW1/12 wherein designation of the claimant has been mentioned as Caretaker but same has been issued for the year 2013-2014 (Temporary card) and nature of her appointment has been described as "Out Sourcing". **Identity Card Ex.WW1/13 was issued in favour of the claimant by M/s KMS Enterprises** –Management No.2 herein. MW1 has filed on record copy of the agreement dated 1/10/2009 (Ex.MW1/1) executed between the Management No.1 and Management No.2 for providing non-teaching/technical staff. There is nothing on record to suggest that the agreement executed between the Management No.1 and 2 is sham or bogus. It has come in the cross examination of MW2 Shri Kailash Bhatt that Management No.2 used to get payment as per contract from Management No.1 and salary/wages used to be released to the claimant by Management No.2. He admitted that Management No.2 used to **get service charge from Management no.1** and that services of the **claimant were terminated on 10/7/2014 by Management No.2** at the instance of Management No. 1

13. From the above evidence adduced on record it is evident that it was the Management NO.2 who used to pay salary/wages to the claimant and services of the claimant were terminated by Management No.2. Needless to stress that only the appointing authority has power to terminate the services of the worker so employed/engaged by it. Once the salary/wages to the claimant were paid by Management No.2 and services of the claimant were disengaged/terminated by Management NO.2, there existed relationship of employee-employer between the claimant and Management No.2. As such, contention of the Management No.1 that there was/is no privity of contract between the claimant and Management No.1, is acceptable. Consequently, the claim petition against Management No.1 is not legally maintainable.

14. Now the question arises for consideration is whether services of the claimant were terminated illegally and unjustifiably by the Management as alleged by the claimant or whether the claimant had herself abandoned the job, as alleged by the Management No.2 herein. It is a matter of record that on the complaint of the claimant, the Labour Inspector, Govt. of NCT of Delhi had conducted proceedings and submitted his report. Much reliance has been placed by A/R appearing for the Management No.2 on the report of the Labour Inspector dated 11/11/2014 (Ex.MW2/1 which is true copy of document Ex.WW1/4 relied upon by the claimant herself). To my mind, this document is of no help to the case of the Management, inasmuch as the said report simply indicates that the claimant was engaged/appointed by the contractor M/s KMS Enterprises and that the Contractor & its representative stated that they will re-employ the claimant at any other place of work but for that the claimant/workman was not ready. Thereafter reconciliation proceedings were conducted by the Reconciliation Officer which ended in failure as is apparent from certificate Ex.WW1/9. Although a plea has been taken by Management No.2 that the workman was never terminated rather she left the job without informing the Management No.2 & was absent from duty w.e.f. 16/5/2014 and she received her salary upto 31/5/2014, however MW2 Kailash Bhatt – sole witness of the Management No.2 has not substantiated the same inasmuch as he simply tried to explain that a letter was given to the claimant who was absent from duty, asking her to join duties but he showed his ignorance when such letters were given and admitted that no such letter has been filed on record. Even if it is assumed for the sake of arguments that the claimant had abandoned the job and remained absent from duty unauthorisedly w.e.f. 11/1/2013 onward, in such a situation also, the Management No.2 was required to issue call back notice to the claimant before terminating his services. This course of action has not been adopted by the Management N\o.2 for the reasons best known to it. It is fairly settled that the plea of abandonment taken by the Management is not sustainable if the Management had not issued any notice asking the workman to report for duty, followed by conducting of regular enquiry to hold the workman guilty of absenteeism. Reliance in this respect may be made to the decision in the case of **Kali Ram Vs. Presiding Officer & another, 2017 LLR 95 (P& H) and of Inderdev Yadav Vs. Govt. of NCT, 2015 LLR 1138 (Delhi).**

15. It is reiterated that the Management No.2 has not issued any notice, calling back the workman/claimant to report for duty or that any domestic enquiry was conducted by the Management No.2 against the workman /claimant to prove misconduct of unauthorized absence on the part of the claimant/workman.

16. Since the Management company had neither issued any call back notice to the claimant nor had conducted any domestic enquiry against the workman /claimant qua his misconduct of unauthorized absence from duty, the plea of abandonment taken by the Management No.2 is not at all acceptable. On the contrary, MW2 –sole witness of the Management No.2 has admitted that on 10/7/2014 services of the claimant were terminated by Management No.2 at the instance of Management No.1. Admittedly, the Management bank has not issued any notice to the claimant before ordering her termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman.

There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law. As such, it is held that action of the Management No.2 in terminating/disengaging the services of the claimant herein was unjustified and illegal.

17. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the Management No.2 prior to her termination on 10/7/2014. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman was of perennial and regular nature as she was serving as Customer Services Representative. The claimant has pleaded and testified that she is totally unemployed since the day of his termination from service. The Management No.2 has not led any evidence to show that the claimant is gainfully employed and earning her livelihood.

18. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

(i) "In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

19. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the

action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. [*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497].

20. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

21. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.***"**

Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

22. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after her termination by the Management No. 2. Award is passed accordingly against Management No.2.

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, पटना (बिहार) के पंचाट [संदर्भ सं. 8(सी)/2014] को प्रकाशित करती है जो केन्द्रीय सरकार को 16.04.2019 को प्राप्त हुआ था।

[सं. एल—39025/01/2019—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 08(C) of 2014] of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Patna (Bihar) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Punjab National Bank and Others, and their workmen which were received by the Central Government on 16.04.2019.

[No. L-39025/01/2019-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No.:- 08 (C) of 2014

Between : (1) The General Manager, Personnel Administration Deptt. Punjab National Bank, Head Office, 7, Bhikajee Cama Place, Africa Avenue, New Delhi-110066 (2) The Circle Head, Punjab National Bank, Arrah Circle, Hotel Regal compound, At & P.O- Arrach, Dist.- Bhojpur, Bihar And their workman Sri Uday Radha Krishna, S/O- Late Prof. Radha Krishna Gupta, Maharajahata, Thana Road, P.S- Buxar Town, Dist.- Buxar through represented The General Secretary, Punjab National Bank Staff Union.

For the management:- Smt. Sneha Singh, Sr. Manager, HRD

For the workman :- Sri B. Prasad, General Secretary, PNB Staff Union.

Present : Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, 28th November, 2018

1. The present case has been filed u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of reinstatement in the services of the bank w.e.f 21.03.2014 with all consequential benefits.

2. Matter was raised by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice dt. 05.08..2014 to the parties vide file no.- 1/25/2014/ALCI.

3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings on various dates and lastly on 03.06.2014 and tried his level best to settle the dispute but due to the adament attitude of the management the conciliation proceedings ended in failure and the dispute could not be resolved.

4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendement) Act, 2010.

5. Both parties appeared before this tribunal and filed their Statement of claim & Rejoinder on behalf of the workman to the written statement of management.

6. The workman has stated that the management terminated the services of the workman from 21.03.2014 by way of imposing the punishment of " Dismissal without notice", on the workman.

7. On 17.07.2015 order was passed on the point of fairness of domestic enquiry.

8. In the instant case a petition has been filed on behalf of the management on 28.08.2018 stating therein that in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same should be rejected.

9. A petition has also been filed on behalf of the workman on 27.09.2018 praying theirin to withdraw the instant I.D.Case.

10. Heard both the parties.

11. As the petitioner / workman himself wants to withdraw the I.D.Case, his prayer is hereby allowed and the I.D. Case is accordingly dispossed off as not maintainable in the light of the aforesaid recent judgement of the Hon'ble Patna High Court. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, पटना (बिहार) के पंचाट [संदर्भ सं. 9(सी)/2015] को प्रकाशित करती है जो केन्द्रीय सरकार को 16.04.2019 को प्राप्त हुआ था।

[सं. एल—12011/43/2015—आईआर (बी.-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 09(C) of 2015] of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Patna (Bihar) as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen which were received by the Central Government on 16.04.2019.

[No. L-12011/43/2015-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. : 09 (C) of 2015

Between : Between the management of The General Manager Indian Overseas Bank, Personnel Administration Deptt., Anna Salai Chennai-600002 And their workman Sri Vilash Mehtar represented through the General Secretary, Employees Federation, 205 Saboo Complex, Behind Republic Hotel Exhibition Road, Patna (Bihar).

For the management : Sri Neeraj Kumar,Representative of the management.

For the Workman : Sri B. Prasad, General Secretary.

Present : Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, 23rd November, 2018

By the adjuication order no. L-12011/43/2015-IR(B-II) dated- 07.08.2015 / 11.08.2015 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act"), the following dispute between the management of General Manager, Indian Overseas Bank, Personnel Administration Deptt., Anna Salai Chennai-600002 and their workman Sri Vilash Mehtar for adjudication to this tribunal:-

SCHEDULE

" Whether the denial of services of workman Sri Vilash Mehtar who has been working as part time sweeper on ½ wages from 2006 in Indian Overseas Bank Bhagalpur is entitled to be regularized as permanent sweeper? If not what relief he is entitled for?"

2. The case of the workman is that he was appointed as a part time sweeper by the management of Indian Overseas Bank vide letter No.- PAD / 178 / CL (SW) /2006-2007 dated- 07.09.2006. The workman has to discharge all the duties of a part time sweeper such as:-

(a) Cleaning, Sweeping the Branch Premises;

(b) Cleaning Sweeping the Latrine / Bathroom;

(c) Cleaning counters, tables, counters etc;

(d) Other sundry jobs of a sweeper.

The further case of the workman is that he has been working about four hours for which half scale wages of a full time subordinate staff was being paid to him. The further case of the workman is that Chief Regional Manager, Patna sent requisition papers for police verification to the Superintendent of Police, Katihar. The police verification report was submitted to the Chief Regional Manager, Indian Overseas Bank, Patna. The further case of the workman is that the General Manager, Personnel Administration Department, Chennai vide lette No. PAD/178/CLSW/87/ 2007-2008, dated- 05.03.2008 after receiving the police verification report advised the Chief Regional Manager, Patna to confirm the services of the workman as a part time sweeper on ½ wages of a full time subordinate staff, but the Chief Regional Manager, Patna failed to carry out the order of the Head Office and did not confirm the services of the workman as has been ordered by the Head Office. According to the workman a temporary workman is required to be confirmed in the services of the bank after completion of six months of his probation period. The action of the management in denying regularisation of the services as a part time sweeper on ½ wages is neither legal nor justified and the management violated the provisions of Bipartite Settlement. The management resorted to unfair labour practices and the management also violated the Provident Fund Rules. The workman belong to SC community and he has prayed for regularisation of his services as a part time sweeper on ½ wages of full time subordinate staff after expiry of a period of six months from the date of his appointment vide letter dated- 07.09.2006 and also extension of all consequential benefits like P.F etc and payment of due wages on account of industry level wage settlement.

3. Written statement has been filed on behalf of the management denying the claim of the workman. As per the management the workman was engaged as a part time sweeper on purely contractual / adhoc basis by the concerned branch of the bank after receiving clearance with respect to such empanelment in order to meet the requirements of the branch office. The further case of the management is on the request of the branch and Regional Office regarding the engagement of a part time sweeper for the Bhagalpur Branch and on the recommendation of Regional Office, Patna the Central Office of the bank had sent a letter dated- 07.09.2006 to the Regional Office regarding empanelment of Sri Vilash Mehtar in temporary messenger pannel subject to conditions mentioned therein. The further case of the management is that on 28.01.2005 instructions were issued by the Central Office wherein it has been clearly mentioned that sweeper vacancies have to be filled up by calling for application through employment exchange and no unauthorized engagement is to be made by any branch. It has been further stated that in the mean time Vilash Mehtar continued to offer his services to the bank as a part time sweeper in the concerned branch of the bank on purely adhoc basis drawing daily wages as casual labour how ever no formal engagement order was issued to the workman Vilash Mehtar. The further case of the management is that an instruction was issued on 29.01.2008 by the Central Office of the bank in continuation with other instructions to fill up the vacancies of sweepers / messengers by calling for applications through employment exchange and not otherwise by engaging somebody at the branch level in unauthorized manner. The case of the management is that since there were instructions issued by the Central Office to make appointment of sweeper by inviting application through employment exchange and therefore even after the receipt of the police verification report no engagement by drawing of formal engagement order was issued by the bank of alleged workman Sri Vilash Mehtar. However in order to meet the immediate requirement of the concerned branch, alleged workman Sri Vilash Mehtar continued on purely adhoc basis as a daily wager and used to offer his services to the concerned branch of the bank and in remuneration of the same used to draw wages at the agreed rate for the number of days he had offered his services to the branch and not consolidated fixed amount every month. He was paid variable wages taking into account the break in service as per the attendance sheet. The demand of alleged workman Sri Vilash Mehtar for his

regularization is completely unjustified and untenable in the eye of law. It has been further stated that the bank's board have decided not to make any permanent appointment for sweeping work and to outsource the cleaning and sweeping work by making engagements on contractual basis through contractors and thus when as a policy bank is not making any permanent appointment of sweepers, there can be no question of regularization as has been claimed in he present case. It has been further stated that if the alleged workman Sri Vilash Mehtar is ready and willing to enter into contract for continuing to offer his services as a sweeper then the same can be entered into on the fulfillment of the norms and conditions of outsourcing as per the policies of the bank in this regard. In the written statement it has been submitted that engagement of alleged workman Sri Vilash Mehtar was not made vide letter dated- 07.09.2006 rather the said letter was only a communication by the Central Office to the Regional Office for issuance of temporary engagement order and engagement of alleged workman Sri Vilash Mehtar on purely temporary / contractual basis after receipt of the Police verification report and compliance of other terms and conditions as mentioned in the letter and hence it is wrong to say that the engagement of Vilash Mehtar was made vide letter dt. 07.09.2006. The determination of quantum of wages was understanding between alleged workman Sri Vilash Mehtar and the concerned branch and the same was not done by making any computation on the basis of the wages of the subordinate staffs. It is also evident from the attendance register that he was not engaged for 240 days continuously. It has been further stated that deliberation between the Regional Office and the Central Office does not confer any right of regularization. There is no provision for confirmation of service or even probation period for a casual / adhoc appointee and as such the claim of the alleged workman Sri Vilash Mehtar for confirmation of his services after completation of six months of probation period is not tenable. It has been further stated that there is no provision in law which mandates that appointment by a public sector bank has to be made only against sanctioned posts and on permanent basis and therefore it can not be say that the bank has resorted to unfair labour practices as per schedule-V read with section 25 T of the Industrial Dispute Act. The provisions of Bipartite Settlement and the Provident Fund Rules are also not applicable in this case. The management has stated that the alleged workman Sri Vilash Mehtar is not entitled for any relief as prayed for by him.

4. The workman has also filed rejoinder to the written statement filed the management, in which he repeated the same things as stated by him in his statement of claim denying the averments of the management.

5. In this case the alleged workman Sri Vilash Mehtar has examined himself only and no other witness was examined on his behalf.

The management has examined two witnesses namely M.W-1 (Sri Brajesh Kumar Singh) and M.W-2 (Sri Arun Kumar Srivastava).

6. On behalf of the alleged workman Sri Vilash Mehtar the following documents have been proved. Which have been duly marked as Exts :—

Ext.-W	Attendence sheet of the alleged workman.
Ext.-W/1	is the letter dt. 07.09.2006 of Central Office, Chennai sent to the Chief Regional Manager, Regional Office, Patna.
Ext.-W/2	is the letter dt. 07.09.2009 sent to the S.P Katihar by the branch office of the bank for verification of character & antecedents of Vilash Mehtar.
Ext.-W/3	is the School Living Certificate of the Vilash Mehtar.
Ext.-W/4	is the Caste Certificate of Vilash Mehtar.
Ext.-W/5	is the letter dated 07.11.2009 issued by S.P. Katihar to the Indian Overseas Bank, Bhagalpur branch regarding the character and antecedents of Vilash Mehtar.
Ext.-W/6 to 6/2	series are of internal letters between branch office of Indian Overseas Bank, Bhagalpur to Regional Office,Patna.
Ext.-W/7	is the salary statement relating to Vilash Mehtar.
7.	The following documents have been proved by the management which have been duly marked as Exts:—
Ext.-M	is the letter dated 07.09.2006 of the Central Office Chennai addressed to Chief Regional Manager, Patna (the same has Ext.-W/1).
Ext.-M/1	is the letter dt. 28.01.2005 sent by the General Manager, India Overseas Bank to all Regional Office of the bank regarding unauthorized engagement.
Ext.-M/2	is the letter dt. 07.09.2009, (the same Ext.- W/2).
Ext.-M/3	is the letter dt. 29.01.2008 of General Manager of the Indian Overseas Bank to all Regions regarding unauthorised engagement.
Ext.-M/4	is the attendence sheet of the Vilash Mehtar (the same as (Ext-W).
Ext.-M/5	is the letter dt. 25.04.2018 of Regional Office, Patna addressed to officer incharge employment exchange, Bhagalpur.

Ext.-M/5-1 is the letter dt. 07.05.2018 of employment exchange, Bhagalpur sent to Regional Office of the bank at Patna.

8. The alleged workman Sri Vilash Mehtar who has been examined as W.W.-1 in this case has stated in his deposition that at present he is working in the Indian Overseas Bank, Bhagalpur as a Part Time Sweeper. He has further stated that he is working in the Tilkamanchi branch of the bank from 08.10.2001. He worked in that branch till 2005 and later on after police verification he is working in the main branch Bhagalpur. He has further stated that in 2005 his name had come from employment exchange to the bank and he also faced interview. He has further stated that he is working in the Bhagalpur branch since 2006 as a part time sweeper and his attendance was also maintained there. He has proved his School Leaving Certificate and Caste Certificate which have been marked as Ext.- W/3 & W/4 respectively. He has further stated that he used to work in the bank from 09.00 A.M to 12.00 noon for which he was paid Rs. 4060/-. He has further stated that earlier he was paid on salary register but after institution of the case payment is through voucher.

In cross examination he has stated that at present he is getting Rs. 150/- per day. He was engaged in the bank on daily wage but there is no letter regarding his appointment. In his cross-examination also he has admitted about his working hour as has been stated in the examination-in-chief. He has admitted in para-14 of deposition that he was engaged in the bank temporarily. He has further stated that he was given joining letter which he has submitted in the branch and he has not kept the copy of the same. He has further stated that his name was entered in employment exchange, Bhagalpur but there is no paper of employment exchange in his possession. He submitted the same in the branch at the time of joining. He has further stated that he cannot say whether any advertisement was publised or not regarding the post on which he is working.

9. M.W-1 (Sri Brajesh KumarSingh) who is Branch Manager, Indian Overseas Bank of Bhagalpur branch in his deposition has stated that alleged workman Sri Vilash Mehtar is not an employee of Indian Overseas Bank and no appointment order was issued to him and it is only a case of disengagement and as such he has no locus standi to raise the present Industrial Dispute. He has further stated that alleged workman Sri Vilash Mhetar was a engaged as a part time sweeper on purely temporary / contractual / adhoc basis by the concerned branch of the bank. He has further stated that the Central Office of the bank after receiving the request from the branch office regarding the engagement of a part time sweeper for the Bhagalpur branch sent a letter dt. 07.09.2006 to the Regional Office directing the concerned branch to issue a temporary engagement order in favour of Mr. Vilash Mehtar and confirm his temporary / contractual / appointment only after the receipt of the Police verification as being satisfactory and also satisfy the other terms and conditions as mentioned in the said letter. In Para-5 this witness has further stated that the Central Office has issued instruction dt. 28.01.2005 whereby and wherein it has been clearly mentioned that sweeper vacancies have to be filled up by calling for applications through the Employment Exchange and no unauthorized engagement is to be made by any branch. It has further stated that alleged workman Sri Vilash Mehtar continued to offer his services to the bank as a temporary part time sweeper in the concerned branch of the bank on purely adhoc basis drawing daily charges as a causal labour and not continuously 240 days. However, no appointment order was issued to the workman Sri Vilash Mehtar. This witness has further stated that one further instruction dated- 29.01.2008 was issued by the Central Office of the bank in continuation with other instructions to fill up the vacancies of sweeper / messengers by calling for applications through the Employment Exchange and not otherwise by engaging somebody at the Branch Level in unauthorized manner. This witness in para-9 of his deposition stated that in order to meet the immediate requirement of the concerned branch, Sri Vilah Mehtar continued on purely adhoc basis on daily wage and accordingly used to draw wages at the agreed rate for the humber of days he had offered services to the branch.

This witness in his cross-examination has stated that alleged workman Sri Vilash Mehtar started working in the bank from 2006. There was no permanent part- time- sweeper in the year 2006. He has further stated that Vilash Mehtar did not use to make his attendance on the attendance register. This witness has denied the attendance register produced before him and has stated that it is a manufactured document. He has proved the letter dt. 07.09.2006 of the Central Office which has been marked as Ext.-M in this case, on the basis of which Vilash was engaged in the bank but it was not an appointment letter. This witness in para-18 of the cross-examination of his deposition has stated that he has some knowledge regarding 9th bipartite settlement. This witness has denied the facts that Vilash Mehtar was prevented from making attendance in the attendance register after filing of this case and mode of payment of salary was also changed. He was paid on daily basis and same mode is still continuing.

Similarly M.W-2 Arun Kumar Srivastava who is Chief Manager of Indian Overseas Bank, Regional Office, Patna has stated the same thing in his examination-in-chief as stated by M.W-1 in his deposition.

This witness in his cross-examination has admitted the fact that Vilash Mehtar was working in the Bhagalpur branch of the bank as a temporary sweeper and is still working there. He is working in the bank since 2006. Vilash Mehtar was engaged in the bank on temporary adhoc basis. The process for regularisation the services of Vilash Mehtar was undertaken but in the mean time in 2008 the post of sweeper was abolished. This witness has proved the letter dt. 07.09.2009 marked as Ext.-W/2 by which the bank has called for report from the S.P Katihar regarding the character and anticident of Vilash Mehtar.

10. The learned representative of the workman submitted that Vilash Mehtar was appointed as a part time sweeper on 07.09.2006(Ext.-W/1) by the management of Indian Overseas Bank. He was discharging his duties as a part time sweeper on half scale wages of a full time subordinate staff. The Chief Regional Manager of the Indian Overseas Bank,

Patna sent requisition papers to S.P. Katihar for police verification regarding the character and anticident of the workman Vilash Mehtar (Ext.- W/2) and after receiving satisfactory police verification report, the Chief Regional Manager, Patna forwarded the same to the General Manager, Head Office Chennai. The learned representative of the workman submitted that that the head office directed the Regional Manager to confirm the services of Vilash Mehtar as a part time sweeper on half scale wages of a full time subordinate staff. The instruction of head office was not carried out by the Regional Manager causing raising of the present Industrial Dispute. The learned representative of the workman further submitted that the workman is continuously working as per the letter dated- 07.09.2006 (Ext.-W/1) but after reference of the present dispute the workman is not allowed to sign the attendance and being paid wages through different modes. It was further submitted that the witnesses examination on behalf of the management have also accepted that Vilash Mehtar has been working as a part time sweeper since 2006 till date. It was further submitted that as per service condition a temporary workman is required to be confirmed in his services after completion of 6 month of temporary service.

11. The learned representative of the workman relied upon several decisions of the Hon'ble Supreme Court of India and The Hon'ble Patna High Court in support of the case of the workman. First of all he relied upon 1994(42) BLJR page-1300 Mithilesh Kumar Singh Versus State of Bihar And Ors. This case relates to termination of service of a Treasure Guard of Public Works Department but the present case of Vilash Mehtar is for regularisation of his services as a permanent sweeper and it is not a case of termination of the services of the workman because he is still working in the bank. Thus in my view the aforesaid ruling relied upon by the representative of the workman is not at all applicable in the facts and circumstances of the case.

The learned representative of the workman further relied upon 2010 (1) SCR 591 in the case of Harjinder Singh Versus Punjab State Warehousing Corporation decided by the Hon'ble Supreme court of India on 05.01.2010. This case relates to the reinstatement of a terminated employee who was appointed in fixed pay scale and whose retrenchment was contrary to the mandate of section-25 (F) and 25 (M) of the Industrial Dipsute Act and there has been violation of the rules of last come first go in as much as persons junior to him were retained in service.It is evident that this case is also not at all applicable in the facts and circumstances of the present case in hand which is for regularisation of the services.

The learned representative of the workman further relied upon a decision of the Hon'ble Supreme Court of India rendered in Civil Appeal No. 3190 of 2011 decided on 11.04.2011 in the case of Devinder Singh Versus Municipal Council, Sanaur. This case relates to termination of services and reinstatement of the workman who was engaged on contract basis and whose services were terminated without holding an enquiry and without giving him notice and compensation and persons junior to him were retained in service.

It is apparent that this case also not at all applicable in the facts and circumstances of the case in hand which is a case for regularisation of service.

The learned representative of the workman further relied upon a decision of the Supreme Court passed in Civil Appeal No. 3209 – 3210 of 2015 decided on 27.03.2015 in the c ase of Umrala Gram Panchayat Versus The Sec. Municipal Employee Union. It is a case of equal pay for equal work. The grievance of the workmen was that they were being monetarily exploited as they were not paid the monetary benefits and allowances etc as are being paid to other permanent safai kamdars.

This case also do not apply in facts and circumstances of the present case.

The learned reprersenative of the workman lastly relied upon decision of the Hon'ble Supreme Court of India in the case of Tamilnadu Terminated Full Time Temporary LIC Employees Association Versus L.I.C of India redendered in Civil Appeal No.- 6951 of 2009 and others on 18.03.2015. In this case the concerned workman were appointed by the management like L.I.C (Management) on daily wage basis against leave vacancies and other vacancies of its employees claimed for their regularisation / absorption.

This case is also not applicable in the facts and circumstance of the present in hand.

12. On the other hand the learned representative of the management (bank) submitted that in fact the present dispute alleged by the workman is not at all an Industrial Dispute as the workman seeks regularisation of his service which is not within the category of Industrial Dispute. It is further submitted that as per the instruction of the Central Office dt. 28.01.2005 (Ext.-M/1), bank its branches cannot make any appointment on the post of sweeper directly. The appointment on the same was to made through employment exchange. The learned representative of the management further submitted however in the year 2006 in order to meet the emergent requirement of sweeper in the branch, the workman Vilash Mehtar was instructed to provide his service on daily wage basis as a casual labour. Neither any formal engagement letter was issued to him nor he was ever appointment in the bank. The letter dt. 07.09.2006 (Ext.M) is not an appointment letter. It is only a letter which was written by Central Office to Regional Office, Patna and it is merely a sanction for engagement of Sri Vilash Mehtar as a temporary sweeper subject to confirmation of certain norms. Persuant to the aforesaid sanction Sri Vilash Mehtar was engaged on adhoc basis drawing daily wage salary for the work of sweeper. However he was not appointed on any permanent post on permanent basis. The aforesaid letter (Ext.-M) is merely an internal communication between Central Office and the Regional Office which was intended to grant permission to Regional Office to engage Vilash Mehtar as casual labour on adhoc basis and was neither addressed to

Vilash Mehtar nor intended to grant him any appointment on permanent basis and therefore the same cannot be basis for regularisation of his service.

The learned representative of the management further submitted that the Central Office by another letter dt. 29.01.2008 (Ext.-M/3) issued instruction to all the branches by which the branches were directed to fill up the vacancies of sweeper / messenger by calling applications through employment exchange and not otherwise. Due to this very reason inspite of police verification report the applicant could not be appointed on permanent basis. Satisfactory police verification report cannot create any right of regularisation in favour of Vilash Mehtar.

The learned representative further submitted that the name of Vilash Mehtar was forwarded by the Employment Exchange in the year 2005. In his cross-examination the workman has stated that he was working Tilkamanzi branch of the bank in Bhagalpur from 08.10.2001. The learned representative submitted that both the aforesaid statements are contradictory to each other. Once when the name was forwarded in the year 2005 then there could not have been any appointment in the year 2001. The workman has claimed that his name was registered in the Employment Exchange, Bhagalpur but he could not produce any paper regarding the same in this tribunal. The Bank in order to confirm that whether his name was actually forwarded from Bank in order to confirm that whether his name was actually forwarded from Bhagalpur Employment Exchange to the bank, sent a letter on 25.04.2018 (Ext.-M/5) to the Employment Exchange, Bhagalpur with regards to the seeking details of the registration of the name of Vilash Mehtar in Bhagalpur Employment Exchange and as to whether his name was forwarded to the Indian Overseas Bank by the Employment Exchange. In response to the aforesaid letter the Employment Exchange replied vide letter dated- 07.05.2018 (Ext.-M/5-1) that no registration number of Vilash Mehtar is available in the exchange and it has also been specifically informed by the Employment Exchange, Bhagalpur in his aforesaid letter that no list was forwarded to the Indian Overseas Bank for any vacancy in 2005. Thus the claim of the employee that his appointment was made on the basis of his name being registered in Employment Exchange and forwarding the same to the bank appears to be totally false. The engagement of the Vilash Mehtar was purely on ad'hoc basis and was only to meet the emergency requirement. His engagement was not on permanent basis on any permanent post. It has been further submitted that at present as a policy decision it has been decided by the bank that no permanent appointment of sweeper is to be made to the bank and thus at present there is no post of sweeper in the service of the bank on which the employee can be regularized. It has been decided by the bank that the sweeping work will be taken by outsourcing the work. At present there is no scheme of regularization prevailing in the bank and threfore no question for regularization. It has been submitted by the representative of the bank that as the appointment of Vilash Mehtar was not being in accordance with the procedure prescribed, there being no permanent post of sweeper in the services of the bank and further the appointment of Sri Vilash Mehtar being purely temporary in nature his service cannot be regularized, more particularly in absence of any Regularization Rules in the bank.

The learned representative of the bank in this regard relied upon a number of decisions of the Hon'ble Supreme Court. It is not necessary to refer all those decisions but a few of them which are relevant and applicable to the facts of this case are here by referred. **The first decision which was relied upon by the bank is 2006 (4) Supreme 290 National Fertilizers Ltd. & Ors Versus Somvir Singh in which it was held that " Regularisation of service of person recruited on adhoc basis in violation of recruitment rules would render the appointment as nullity. Question of confirmation of such employee would not arise.**

Second decision which was relied upon by the bank is (2006) 7 Supreme Court Cases 684 Surinder Prasad Tiwari Versus U.P. Rajya Krishi Utpadan Mandi Parishad and others. In this case the Hon'ble Apex Court held that the daily wager, adhoc employee, probationer, temorary or contractual employee who were appointed without following procedure laid down under article 14, 16, and 309 of the of the constitution cannot be directed to be regularised / absorb in service.

Third decision which relied upon by the bank is (2007) 1 Supreme Court Cases 408 Indian Drugs & Pharmaceuticals Ltd. Versus Workmen, Indian Drugs & Pharmaceuticals. In this case the Hon'ble Apex Court held that the daily rated or casual worker is only a temporary employee who has no right to the post, or to be continued in service, to get absorbtion, far less of being regularised and getting regular pay. The Hon'ble Apex Court further held that in such cases no direction can be passed for regularising the service of temporary employee. Regularisation cannot be a mode of appointment. A post must be created and / or sanctioned before filling it up.

Fourth decision which relied upon by the bank is (2006) 4 Supreme Court Cases 1 in between Secretary, State of Karnataka and others Versus Uma Devi (3) and others. In this case the Hon'ble Apex Court specifically held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract; if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the

strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."

13. After hearing the respective parties of the case, going through the pleadings and documents of both the parties and materials available on record and also the several decisions cited by the respective parties, I am of the view that the workman Sri Vilash Mehtar is not entitle to get his service regularized in the bank as a permanent sweeper because he was not appointed in the bank in accordance with the procedure prescribed but he was appointed purely on adhoc basis and there is no permanent post of sweeper in the bank. The workman Sri Vilash Mehtar still continues to work in the bank and though the bank is not ready to regularize his service but bank is also not going to remove him from the service of the bank. If in future any scheme for regularization comes, the bank authority will sympathically consider the claim of the workman Sri Vilash Mehtar for regularisation considering the fact that he has served the bank for a fairly long spell, provided he is eligible and qualified according to the rules and his service record is satisfactory.

14. Accordingly it is hereby held that the at present the workman Sri Vilash Mehtar is not entitled to be regularised as a permanent sweeper in the bank. This award is effected after date of publication and gazette.

And accordingly this is my award.

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स रिचर्डसन एण्ड क्रुध्दास लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 142/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल—42012/217/2001—आईआर (सी.एम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 142/2002) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s Richardson & Cruddas Limited and their workmen received by the Central Government on 16.04.2019.

[No. L-42012/217/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/142/2002 Date: 16.01.2019.

Party No.1 : The Dy. General Manager,
Richardson & Cruddas Ltd.,
MIDC, Hingna, Nagpur.

Versus

Party No.2 : Shri Naresh S/o. Sh. Kothiram Meshram
R/o. Behind Bagadganj Police Station,
Nagpur.

AWARD

(Dated: 16th January, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Richardson & Cruddas Ltd. and their workman Shri Naresh Meshram, for adjudication, as per letter **No.L-42012/217/2001-IR (CM-II) dated 02.08.2002,** with the following schedule:-

"Whether the action of the management of M/s. Richardson and Cruddas (1972) Ltd. a Govt. of India undertaking, Nagpur through its Dy. General Manager, in dismissing Shri Naresh S/o. Kothiram Meshram r/o. behind Bagadganj Police Station, Nagpur, w.e.f. 25/08/1995 is legal and justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Naresh Meshram, ("the workman" in short) filed his statement of claim and the management of the Richardson & Cruddas ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was employed as a semi-skilled workman with the party no.1 and worked for about 10 years with integrity and his entire service record was excellent and unblemished and on 11.04.1994, he was put under suspension by the order of the Chief Manager dated 10.04.1994 and on 21.04.1995, he was served with a charge sheet containing 3 head of charges, under Rule 23 of the Certified Standing Orders and the charges leveled against him were willful insubordination, disobedience, drunkenness and commission of acts, subversion of discipline and the entire charge sheet was bogus, concocted and fabricated and he submitted his reply denying the charges and Mr. F. G. Issac, an advocate was appointed as the enquiry officer, by order dated 30.04.1994 and the enquiry officer without giving him any opportunity to demand document from the management or to examine his witnesses and without considering the documents produced by him conducted the enquiry in undue haste, by violating the principles of natural justice and the enquiry officer submitted his report on 10.07.1995 and the enquiry conducted against him was not fair and proper and the enquiry officer was not competent to hold the enquiry and thus, the enquiry was vitiated and the charge sheet, show cause notice and dismissal order were issued by the Dy. General Manager, who had no right, power or authority to dismiss him from services and as such, the order of dismissal is without jurisdiction, the same being passed by an incompetent person. The further case of the workman is that the findings of the enquiry officer are perverse and the enquiry officer was interested in submitting a favourable report in favour of the party no.1 and the punishment of dismissal from services imposed against him is shockingly disproportionate to the gravity of the charges and as such, the said order amounts to an unfair labour practice and victimization, in colourable exercise of employer's right and the misconducts alleged to be committed by him were minor and technical in character and the punishment was imposed without considering his past service record. The workman has prayed to quash and set aside the order of dismissal dated 25.08.1995 and to reinstate him in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the workman was placed under suspension from 11.04.1995, pending contemplation of disciplinary action and he was charge sheeted for his involvement in commission of various serious misconducts and the charges were genuine and an enquiry officer was appointed correctly to enquire into the charges and the enquiry officer conducted the proceedings of the enquiry in a proper manner and the workman was afforded all reasonable opportunities consistent with the principles of natural justice to defend his case and he was supplied with all the documents, which were produced during the enquiry and also copies of the day to day proceedings and though the workman was given scope to lead evidence, he did not avail the opportunity and the representation by 111 employees as mentioned in the statement of claim has nothing to do with the enquiry and the enquiry was not conducted in a haste and on completion of the enquiry, the enquiry officer submitted his report and there is no bar to appoint a practicing advocate in conducting the enquiry and the enquiry officer was properly appointed and he was competent to hold the enquiry and the objection raised by the workman was duly considered and the workman was issued with the show cause notice on 13.07.1995, by the competent authority and there was no infirmity in the matter of competency of the concern officer and the workman was supplied with the findings of the enquiry officer to enable him to file objection if any and the dismissal order was also passed by the competent authority and the same is perfectly legal and as the charges framed and proved against the workman were of serious in nature, the order of dismissal from service passed against him is justified and the findings of the enquiry officer are based on documents and other materials on the record of the enquiry and the enquiry officer had no reason to nurture any animosity against the workman and the punishment is not shockingly disproportionate and the workman is not entitled for any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 17.03.2010, the enquiry was held to be proper and valid.

5. **Point of determination:-**

i. Whether the findings of the Enquiry Officer are perverse?

ii. Whether the punishment of the workman is disproportionate?

iii. Whether the order of dismissal of the workman is liable to be set aside?

iv. Whether the workman is entitled to any other relief?

Reasons of Determination:

My predecessor on the basis of judgment reported in 2006-I-LLJ 1074 Verma L.K. Vs. HMT Limited and 2002 LLR 255 (Gwalior Porters and Ors Vs. Bhagwandas) hold that, punishment imposed against the workman is legal and proper. So, calling for interference according to him is not required.

6. This order was challenged in Hon'ble High Court in the Writ Petition 4319/2012 and Hon'ble High Court passed an order dated 20.08.2015 by remitted back to this Tribunal for deciding it afresh. The Hon'ble Court also directed that, "Tribunal may grant opportunities to the parties to adduce evidence…….shall also permit the parties to

cross-examine the witnesses……not permitted to amend the pleadings……petitioner and respondent No. 1 undertake to appear before the CGIT on 21.09.2015 at 11.00 a.m. and abide by the order/instruction of the Tribunal in the matter.

7. On perusal of the order sheet, it appears that, both parties were present. No fresh vakalatnama was filed by the either side. After that, the post of Presiding Officer was vacant. On 03.03.2016, petitioner was present. On the side of the management, nobody was present. On 04.04.2018, advocate filed an application to file reply, which was accepted by me. After that, both parties were absent. On 15.10.2018, advocate for the petitioner was present, but nobody appeared on behalf of the management. This Tribunal on 12.12.2018, decided applications I.A. No. 1 and 2 in absence of both parties. After that, nobody has appeared on behalf of their respective party. It shows that, opportunity was given to both parties, but they did not avail.

8. On the perusal of the records, it also appears that, on 24.04.2007, my predecessor proceeded exparte against the management i.e. management did not cross-examine the petitioner, Naresh Meshram. After that, on 16.08.2011, management filed written notes of argument and then award was passed by my predecessor on merit on 09.02.2012. Even direction of the Hon'ble High Court, no party shown their interest in the case proceedings. My predecessor also found that, "Commission of serious misconducts like abusing senior officers and manhandling the officer have been proved against the workman in a properly held departmental enquiry". So, in my humble opinion, I do not want to interfere in the order passed by the management. Hence, it is ordered:-

ORDER

The action of the management of M/s. Richardson and Cruddas (1972) Ltd. a Govt. of India undertaking, Nagpur through its Dy. General Manager, in dismissing Shri Naresh S/o. Kothiram Meshram r/o. behind Bagadganj Police Station, Nagpur, w.e.f. 25/08/1995 is legal and justified. The workman is not entitled for any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह—श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 30/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल—22012/25/2017—आईआर (सीएम-II]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15/04/2019

[No. L-22012/25/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/30/2018-19 Date: 14.01.2019

Party No.1 : The Chairman-cum-Managing Director,
Western Coalfields Limited, Coal Estate,
Civil Lines, Nagpur (M.S.).

Versus

Party No.2 : General Secretary,
Coordination Committee,
Bhartiya Koyla Khadan Mazdoor Sangh (BMS),
Western Coalfields Ltd., Coal Estate,
Civil Lines, Nagpur (M.S.).

AWARD

(Dated: 14th January, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Bhartiya Koyla Khadan Mazdoor Sangh (BMS) for adjudication, as per letter **No.L-22012/25/2017 (IR (CM-II) dated 26.06.2018,** with the following schedule:-

"Whether the action of the management of WCL through its Chairman-cum-Managing Director, WCL, Coal Estate, Civil Lines, Nagpur in compliance of charter of demands of Coordination Committee of Bhartiya Koyla Khadan Mazdoor Sangh (BMS) on their representation dated 09.01.2016 (Annexure-A) is fair, justified & Legal? If not, what relief the union and workmen are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 05.09.2018. Shri D.L. Dharmadhikari and Rahul Dharmadhikari, advocates filed joint vakalatnama on behalf of the Party No. 1 i.e. management on 05.09.2018 and Shri Ashok Malaviya filed authorization on behalf of the petitioner/union, but no statement of claim was filed on that day. From that day, this case was adjourned to 15.10.2018 and 28.11.2018 in the same capacity. On 28.11.2018, nobody was present on behalf of the petitioner/union and a last chance was given to the petitioner/union to file statement of claim. Today also, petitioner is absent and no statement of claim has been filed, though last chance was given. So, I think that, the petitioner is not interested to proceed with this reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 636.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू. सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 29/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल–22012/64/2017–आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/64/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/29/2017-18 Date: 05.02.2019

Party No. 1 : The Sub Area Manager,
Naigaon Open Cast Mine,
Western Coalfields Limited,
Post: Belora, Tehsil: Wani,
Distt. Yavatmal.

Versus

Party No. 2 : The Secretary,
All India SC/ST/BC/Class Employees Co-ordination Council,
Qrt. No. B-51, Ramnagar Colony, Ghugus,
Distt. Chandrapur – 442505.

AWARD

(Dated: 05th February, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/BC/Class Employees Co-ordination Council for adjudication, as per letter No.L-22012/64/2017 (IR (CM-II) dated 16.11.2017, with the following schedule:-

"Whether the demand by all India SC/ST/BC/Employee Co-ordination Council Wani Area, Tah. Ghugus, Dist. Chandrapur over the issue of anomaly in pay disparity i.r.o. Shri V.V. Irpanwar, Sr. Mechanic, Naigaon Open Cast Mine, Western Coalfields Ltd., Post. Belora, Tah. Wani, Dist. Yavatmal is just, fair & legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 25.05.2018. Both the parties were absent since 25.05.2018. On 28.01.2019, Shri P.P.K. Pillai, Asstt. Manager (Per.), Naigaon OCM, WCL filed authorization on behalf of the management and also filed an application to dismiss the reference. He also informed orally that, party is not interested to proceed with the claim, because this Tribunal rejected same type of references of other workers. This application is marked as I.A. No. 1.

3. After perusal of the record, it appears that, such types of four references are pending before this Tribunal. Notices have been sent to the petitioner and management in a joint envelope, which were served on both parties. A.Ds are enclosed in the file. On behalf of the management, Mr. Pillai filed authority letter. Office also supplied photocopy of Dispatch Register. Near about one year and two months has been lapsed from service. It shows that, the petitioner is not interested to proceed with this reference. Hence, I.A, No. 1 is accepted and it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स डब्ल्यू. सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह—श्रम न्यायालय नागपुर के पंचाट (संदर्भ सं. 28/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल—22012/63/2017—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/63/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/28/2017-18 Date: 05.02.2019

Party No. 1 : The Sub Area Manager,
Naigaon Open Cast Mine,
Western Coalfields Limited,
Post: Belora, Tehsil: Wani,
Distt. Yavatmal.

Versus

Party No. 2 : The Secretary,
All India SC/ST/BC/Class Employees Co-ordination Council,
Qrt. No. B-51, Ramnagar Colony, Ghugus,
Distt. Chandrapur – 442505.

AWARD

(Dated: 05th February, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/BC/Class Employees Co-ordination Council for adjudication, as per letter **No.L-22012/63/2017 (IR (CM-II) dated 16.11.2017,** with the following schedule:-

"Whether the demand by all India SC/ST/BC/Employee Co-ordination Council Wani Area, Tah. Ghugus, Dist. Chandrapur over the issue of anomaly in pay disparity i.r.o. Shri D.Y. Shiwarkar, Sr. Mechanic, Naigaon Open Cast Mine, Western Coalfields Ltd., Post. Belora, Tah. Wani, Dist. Yavatmal is just, fair & legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 25.05.2018. Both the parties were absent since 25.05.2018. On 28.01.2019, Shri P.P.K. Pillai, Asstt. Manager (Per.), Naigaon OCM, WCL filed authorization on behalf of the management and also filed an application to dismiss the reference. He also informed orally that, party is not interested to proceed with the claim, because this Tribunal rejected same type of references of other workers. This application is marked as I.A. No. 1.

3. After perusal of the record, it appears that, such types of four references are pending before this Tribunal. Notices have been sent to the petitioner and management in a joint envelope, which were served on both parties. A.Ds are enclosed in the file. On behalf of the management, Mr. Pillai filed authority letter. Office also supplied photocopy of Dispatch Register. Near about one year and two months has been lapsed from service. It shows that, the petitioner is not interested to proceed with this reference. Hence, I.A, No. 1 is accepted and it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू. सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह–श्रम न्यायालय नागपुर के पंचाट (संदर्भ सं. 27/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल–22012/61/2017–आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/61/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/27/2017-18 Date : 05.02.2019

Party No. 1 : The Sub Area Manager,
Naigaon Open Cast Mine,
Western Coalfields Limited,
Post: Belora, Tehsil: Wani,
Distt. Yavatmal.

Versus

Party No. 2 : The Secretary,
All India SC/ST/BC/Class Employees Co-ordination Council,
Qrt. No. B-51, Ramnagar Colony, Ghugus,
Distt. Chandrapur – 442505.

AWARD

(Dated : 05th February, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/BC/Class Employees Co-ordination Council for adjudication, as per letter No.L-22012/61/2017 (IR (CM-II) dated 16.11.2017, with the following schedule:-

> "Whether the demand by all India SC/ST/BC/Employee Co-ordination Council Wani Area, Tah. Ghugus, Dist. Chandrapur over the issue of anomaly in pay disparity i.r.o. Shri N.N. Sahare, Sr. Mechanic, Naigaon Open Cast Mine, Western Coalfields Ltd., Post. Belora, Tah. Wani, Dist. Yavatmal is just, fair & legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 25.05.2018. Both the parties were absent since 25.05.2018. On 28.01.2019, Shri P.P.K. Pillai, Asstt. Manager (Per.), Naigaon OCM, WCL filed authorization on behalf of the management and also filed an application to dismiss the reference. He also informed orally that, party is not interested to proceed with the claim, because this Tribunal rejected same type of references of other workers. This application is marked as I.A. No. 1.

3. After perusal of the record, it appears that, such types of four references are pending before this Tribunal. Notices have been sent to the petitioner and management in a joint envelope, which were served on both parties. A.Ds are enclosed in the file. On behalf of the management, Mr. Pillai filed authority letter. Office also supplied photocopy of Dispatch Register. Near about one year and two months has been lapsed from service. It shows that, the petitioner is not interested to proceed with this reference. Hence, I.A, No. 1 is accepted and it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह—श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 26/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल—22012/60/2017—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/60/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/26/2017-18 Date: 05.02.2019

Party No.1 : The Sub Area Manager,
Naigaon Open Cast Mine,
Western Coalfields Limited,
Post: Belora, Tehsil: Wani,
Distt. Yavatmal.

Versus

Party No. 2 : The Secretary,
All India SC/ST/BC/Class Employees Co-ordination Council,
Qrt. No. B-51, Ramnagar Colony, Ghugus,
Distt. Chandrapur – 442505.

AWARD

(Dated: 05th February, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/BC/Class Employees Co-ordination Council for adjudication, as per letter **No.L-22012/60/2017 (IR (CM-II) dated 16.11.2017,** with the following schedule:-

"Whether the demand by all India SC/ST/BC/Employee Co-ordination Council Wani Area, Tah. Ghugus, Dist. Chandrapur over the issue of anomaly in pay disparity i.r.o. Shri J.N. Chiwande, Sr. Mechanic, Naigaon Open Cast Mine, Western Coalfields Ltd., Post. Belora, Tah. Wani, Dist. Yavatmal is just, fair & legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 25.05.2018. Both the parties were absent since 25.05.2018. On 28.01.2019, Shri P.P.K. Pillai, Asstt. Manager (Per.), Naigaon OCM, WCL filed authorization on behalf of the management and also filed an application to dismiss the reference. He also informed orally that, party is not interested to proceed with the claim, because this Tribunal rejected same type of references of other workers. This application is marked as I.A. No. 1.

3. After perusal of the record, it appears that, such types of four references are pending before this Tribunal. Notices have been sent to the petitioner and management in a joint envelope, which were served on both parties. A.Ds are enclosed in the file. On behalf of the management, Mr. Pillai filed authority letter. Office also supplied photocopy of Dispatch Register. Near about one year and two months has been lapsed from service. It shows that, the petitioner is not interested to proceed with this reference. Hence, I.A, No. 1 is accepted and it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 20/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल–22012/41/2017–आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/41/2017-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/20/2018-19 Date: 10.01.2019

Party No.1 : The Sub Area Manager,
Durgapur Open Cast Mines,
Western Coalfields Limited,
Post. Durgapur, Tehsil & Distt.
Chandrapur (M.S.).

Versus

Party No.2 : The General Secretary,
Rashtriya Colliery Mazdoor Congress,
Water Board Colony, Hari Mandir Road,
Hirapur, Dhanbad (Jharkhand) – 826002.

AWARD

(Dated: 10th January, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter No. L-22012/41/2017 (IR (CM-II) dated 07.05.2018, with the following schedule:-

> "Whether the demand of Union raised Vide their representation No. CCMC/2013 dated 31.07.2013 (Annexure enclose) is just, fair and legal? If yes, to what relief from the Management of Sub Area Manager, Durgapur Open Cast Mines, Western Coalfields Ltd, Post Durgapur, Dist. Chandrapur, the concerned workman is entitled to and from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due fixing the date on 23.07.2018.Shri R.E. Moharir and Smt. P.R. Moharir, advocates filed joint vakalatnama on behalf of the Party No. 1 i.e. management on 23.07.2018 but nobody was present on behalf of the petitioner on that day. From that day, this case was adjourned to 11.09.2018, 12.10.2018, 22.11.2018 and 09.01.2019, but nobody has been appearing on behalf of the petitioner. So, I think that, the petitioner is not interested to proceed with this reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 16 अप्रैल, 2019

का.आ. 641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सह—श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 10/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.04.2019 को प्राप्त हुआ था।

[सं. एल—22012/13/2013—आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th April, 2019

S.O. 641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur* as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L. and their workmen, received by the Central Government on 15.04.2019.

[No. L-22012/13/2013-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/10/2013-14 Date: 10.01.2019

Party No. 1 : The General Chief Manager,
Ballarpur Area of Western Coalfields Ltd.,
Post Sasti, Tehsil Rajpura,
Distt. Chandrapur, Chandrapur (M.S.).

Versus

Party No. 2 : The General Secretary,
Rashtriya Colliery Mazdoor Congress,
Dr. Ambedkar Ward, Ballarpur,
Post Ballarpur, Distt. Chandraur,
Chandrapur (M.S.)

AWARD

(Dated: 10th January, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter **No.L-22012/13/2013 (IR (CM-II)) dated 03.04.2013,** with the following schedule:-

> "Whether the action of the management of GM Office of Ballarpur Area of Western Coalfields Limited, in denying employment to Shri Sheikh Irfan, the dependant son of Shri Shaikh Ahmad Shaikh Abdulla who has already put in more than 35 years service, which is contrary to the provision of para 9.4.4 of NCWA is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. Mr. A.M. Ghare and P.V. Ghare, advocates filed joint vakalatnama on behalf of the Party No. 1 i.e. management and Shri Masood Sharif and M.A. Rehman, advocates filed joint vakalatnama on behalf of the petitioner. Petitioner filed statement of claim on 16.09.2013 and Party No. 1 filed their reply on 11.11.2013. Management also filed evidence on affidavit, but union/petitioner did not file any evidence on affidavit. Petitioner has been absent from 13.02.2014 and afterwards. Management has filed an application to dismiss the reference, which is marked as I.A. No. 3. It appears that, petitioner/union r is not interested to proceed with this reference. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ सं. 35/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल–12012/32/2009–आईआर (बी-I)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 23rd April, 2019

S.O. 642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen received by the Central Government on 23.04.2019.

[No. L-12012/32/2009-IR (B-I)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of February, 2019

INDUSTRIAL DISPUTE No. 35/2009

Between:

Sri M. Narsing Rao,
H.No.1-1-76, Street no.1, Habsiguda,
Hyderabad – 500 007. ..Petitioner

AND

The Managing Director,
Head Office, Gunfoundary,
State Bank of Hyderabad,
Hyderabad – 500 001. ..Respondent

Appearances:

For the Petitioner : Sri M. Govind, Advocate

For the Respondent : Sir Ch. Siva Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/ 32/2009- IR(B-I) dated referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of Hyderabad, Hyderabad in imposing punishment of dismissal from services with superannuation benefits to Sri M. Narasing Rao, Ex-Daftary, is justified? If not, to what relief the concerned workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 35/2009 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner joined the Respondent's bank as a sub-staff on 31.7.1989 and the Respondent bank being satisfied with his performance has promoted him as Daftary in the year 1994. While the Petitioner was working under the Respondent, he suffered from certain ailments for which he availed sick leave from 5.3.2002 to 10.7.2002 (128 days) and from 10.9.2001 to 5.1.2002 (118 days) and in support of his absence he submitted a medical certificate. The Respondent bank accepted the said medical certificate and sanctioned extraordinary leave for 246 days on loss of pay vide letter No. RIII/GR.1/Staff/5308 dated 6.1.2004 of the Respondent. It is also submitted that During the year 2004 the Petitioner fell seriously ill and as such he remained absent from duty on various dates between 1.4.2004 to 30.9.2006 for about 598 days. In support of his illness he submitted medical certificate and was regularly submitting his leave applications to the Manager, Moulali branch, of the Respondent bank who had developed an ill-feeling against the Petitioner reported to the Asst. General Manager, Zonal Office, Secunderabad that the Petitioner unauthorizedly absented himself from duty. On the basis of the report of the Manager, Moulali Branch, the Asst. General Manager, Zonal office served one charge sheet bearing No. F/GR/staff/3642 dated 16.1.2007 under gross misconduct. It is also stated that although a detailed explanation was submitted by the Petitioner to the Respondent, the same was found to be not satisfactory and a detailed enquiry was conducted. On conclusion of the enquiry the Enquiry Officer submitted his findings vide his letter dated 4.7.2007 and on the basis of the findings of the Enquiry Officer, the disengagement/Asst. General Manager, Zonal office vide his proceeding dated 31.8.2007 imposed a penalty of "Discharge from service with superannuation

benefits". In response to such penalty the Petitioner submitted appeal to the Appellate Authority, i.e., The Dy. General Manager, Zonal office vide his letter dated 22.8.2007 which was dismissed by the Appellate Authority. It is also stated that in the charge sheet it has been mentioned about taking of leave of 246 days which was sanctioned by the competent authority. This act of the Asst. General Manager, has brought into existence a situation to prejudice the mind of the Disciplinary Authority as absence for 246 days which was actually sanctioned earlier. It is also submitted that the Petitioner had regularly submitted leave applications, in support of his illness along with medical certificates. The Manager, Moulali branch being aware of the illness of the Petitioner initially kept the leave application sending without according the necessary sanctions. In the charge sheet it was also alleged that between 1.4.2004 to 30.9.2006, (for 598 days) the Petitioner was unauthorizedly absented. The Medical Officer of the Respondent bank vide his certificate dated 5.10.2006 certified that the Petitioner is fit to resume duty but in fact the Petitioner obeyed the lawful orders of the management. He appeared before the Medical Officer of the bank on 5.10.2006. The Disciplinary Authority has unnecessarily taken serious view on the fact that the Petitioner though certified to be fit to resume duty on 5.10.2006, but has actually reported to duty on 12.10.2006. It is also submitted that in the Departmental enquiry, the attendance register from 5.1.2005 to 18.12.2005 were not produced to substantiate the contention of the Petitioner that he had attended his duty in between the above days. The non-production of the attendance register amounts to denial of principles of natural justice and denial of reasonable opportunity to prove the innocence of the Petitioner. It is stated that the Appellate Authority for disposing the appeal has not given the reason for arriving at the conclusion mentioned therein. The punishment of "discharge from service " is one of the punishments envisaged in the Memorandum of Settlement of Disciplinary Action Procedures for workmen signed between Indian Banks Association and Workmen Unions dated 10.4.2002. Therefore, the punishment imposed on the Petitioner is contrary to the above said Memorandum of Settlement arrived at and as such it is contrary to the terms of the settlement. It is stated that the Respondent management was aware of the reasons for the absence of the Petitioner in as much as he had submitted his leave applications along with the medical certificates from time to time. The only reason for the Petitioner absenting himself was that he was not well and the Doctors who were treating him had advised him for complete bed rest. The Respondent management harping on the certificate issued by the Medical Officer certifying that the Petitioner's illness did not require prolonged treatment/rest and no evidence had been produced in the enquiry that the Petitioner was medically fit till 5.10.2006 to resume duties and further the medical certificates produced by the Petitioner were not genuine. The Respondent management was greatly prejudiced towards the Petitioner when he looked into the fact of his availing sick leave for 246 days, which was in fact sanctioned by the competent authority. The final order passed by the Respondent bank carries this mark of prejudice. It is also submitted that the Petitioner had joined the bank in 1994, worked with diligence, devotion and integrity and he had a blemish less career. Only because he started falling sick he absented himself and the Manager, Moulali branch, who had developed ill feeling against the Petitioner presented before the higher authorities that his absence was wilful and wanton. The punishment imposed on the Petitioner is unwarranted, passed with prejudice and the findings are perverse. Under the above circumstances, the Petitioner prayed this Tribunal to pass an award declaring that, "discharging from service" of the bank as illegal and consequently direct the Respondents to re-instate the Petitioner in the service of the bank with continuity of service, back wages and all attendant benefits and to pass such other order or orders as this court may deem fit and proper in the interest of justice.

3. <u>Respondent filed counter with the averments in brief as follows</u>:

The Respondent in its counter while challenging the maintainability of this case denied some of the facts averred in the claim statement. In the counter the Respondent has stated that the Petitioner joined in the Respondent bank on 11.7.1989 as a sub-staff and he is not a Daftary as claimed by him. the post of Daftary is not a promoted post but due to seniority the sub staff is provided with some allowances and they call him as Daftary. The Petitioner has availed sick leave from 5.3.2002 to 10.7.2002 (128 days) and from 10.9.2001 to 5.1.2002 (118 days) on medical grounds. The Respondent bank has sanctioned the said leave for 246 days as extraordinary leave on loss of pay as per letter date 6.1.2004. But the Petitioner was again remained absent unauthorizedly on several occasions between 1.4.2004 to 30.9.2006 i.e., for about 598 days. As the absence of the Petitioner was unauthorised and the work of the bank was dislocated, he was issued with a charge sheet bearing No. Staff/3642 dated 16.1.2007 for gross misconduct. Subsequently an order was passed for departmental enquiry. Sri P.V.D. Nageswara Rao was appointed as an Enquiry Officer to hold the enquiry against the Petitioner. A Departmental enquiry was conducted and after closure of the enquiry, the Enquiry Officer submitted his findings on 4.7.2007 holding that the charges against the Petitioner was proved. The Disciplinary Authority, after receiving the findings of the Enquiry Officer, forwarded the findings to the Petitioner calling for his submissions. Finally the Disciplinary Authority after considering the entire records of the disciplinary proceeding and the replies given by the Petitioner awarded the punishment of "discharge from service with superannuation benefits" *vide* order dated 31.8.2007. Aggrieved by the said orders the Petitioner preferred an appeal and the Appellate Authority confirmed the punishment awarded by the Disciplinary Authority *vide* his order dated 31.3.2008. It is also submitted that after giving the charge sheet, the Petitioner was also given ample opportunities to participate in the enquiry and the Enquiry Officer has conducted the Departmental proceeding in fair and reasonable manner and in accordance with the rules of the disciplinary action procedures. The punishment awarded by the Disciplinary Authority which was confirmed by the Appellate Authority against the Petitioner is reasonable and adequate. However, if this Tribunal comes to the conclusion that the enquiry conducted was not fair and require more evidences, the Respondent bank may be provided with an opportunity to lead evidence before this Tribunal in the interest of justice. Under the

circumstances stated above, the Respondents prayed that the Tribunal may be pleased to reject the industrial dispute and pass such other order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

4. As per the pleadings of both the parties, the following points are to be determined:

I. Whether the action of the management of the State Bank of Hyderabad in imposing punishment of dismissal from service with superannuation benefits to Si M. Narsing Rao, ex. Daftary is legal and justified?

II. To what relief the Petitioner is entitled for?

5. On 20.4.2017 the domestic enquiry conducted by the Respondent bank is held as legal and valid as the counsel for the Petitioner conceded it as legal.

6. I have already heard arguments of both the sides in the matter.

7. **Point No.I**: The Learned Counsel for the Petitioner submitted that the Petitioner was working as a sub-staff in the bank and subsequently he was promoted to the post of Daftary in the year 1994 and performing his duty sincerely up to the satisfaction of his authorities. It is further contended that the Petitioner suffered with certain ailments for which he availed sick leave from 5.3.2002 to 10.7.2002 for a period of 128 days and from 19.9.2001 to 5.1.2002 for a period of 118 days and in support of his absence he submitted medical certificate. The Respondent has accepted his medical certificate and sanctioned extraordinary leave for a period of 246 days on loss of pay *vide* letter dated 6.1.2004. It is also contended that again during the year 2004 the Petitioner fell seriously ill and found absent from duties on various dates, in between 1.4.2004 to 30.9.2006 for a period of 598 days. In support of his illness he submitted medical certificates, and also regularly submitted his leave applications from time to time, but being influenced by the Manager, Moulali Branch, Asst. General Manager, Zonal office of the Respondent bank served charge sheet to the Petitioner under the allegation of gross misconduct. Even the Petitioner submitted a detailed explanation to the Manager, Moulali branch but the same was not considered and later one Departmental enquiry was conducted, and therein the charges levelled against the Petitioner were proved. On the basis of the findings of the Enquiry Officer, as provided under the Industrial Disputes Act, 1947 the Disciplinary Authority has imposed a penalty of discharge from service with superannuation benefits. In response to the above penalty, the Petitioner preferred an appeal before the Appellate Authority which was also dismissed by the Disciplinary Authority. It is also contended that even though the leave of 246 days had been sanctioned earlier, the Respondent management again had shown the above leave of 246 days in the charge sheet. It is contended that the Petitioner had regularly submitted the leave applications in support of his illness along with the medical certificate. It is also contended that due to the illness the Petitioner was absented from duty between 1.4.2004 to 30.9.2006, (for 598 days) but in fact, he was not found absent unauthorizedly, he has submitted leave applications and medical certificates in support of his leave but it was intentionally not considered. The Disciplinary Authority has unnecessarily taken serious view on the fact that the Petitioner though certified to be fit to resume duty on 5.10.2006, but he has actually reported to duty on 12.10.2006. It is also contended that in the Departmental enquiry, the attendance register from 5.1.2005 to 18.12.2005 were not produced to substantiate the contention of the Petitioner that he had attended his duty in between the above days. Thus, non-production of the attendance register amounts to denial of principles of natural justice and denial of reasonable opportunity to prove his innocence. It is also contended that the punishment of "discharge from service" is one of the punishments envisaged in the Memorandum of Settlement of Disciplinary Action Procedures for workmen signed between Indian Banks Association and Workmen Unions dated 10.4.2002. Therefore, the punishment imposed on the Petitioner is contrary to the Memorandum of Settlement arrived at and as such it is contrary to the terms of the settlement. The Learned Counsel for the Petitioner contended that since the Petitioner was not found unauthorizedly absent, the punishment imposed on him is not in accordance with Law. So, the order passed by the Respondents needs interference of this Tribunal. He contended that declaring the order of , "discharge from service" of the bank as illegal and consequently direct the Respondents to re-instate the Petitioner in the service of the bank with continuity of service, back wages and all other attendant benefits.

8. On the other hand, the Learned Counsel for the Respondent management contended that the arguments advanced by the Learned Counsel for the Petitioner is not at all tenable in the eye of Law. As per the demand of the Petitioner as no leave was in the credit of the Petitioner, his absence for 246 days was treated as an extraordinary leave with loss of pay and the same was sanctioned. Subsequently the Petitioner remained absent unauthorizedly for a period of 598 days and later on he managed to submit medical certificate in support of his illness. The Petitioner was a chronic absentee and is in the habit of remaining absent unauthorizedly. Even though the Petitioner has participated in the domestic enquiry conducted by the Department the Petitioner had not challenged it. Lastly, the Petitioner did not challenge the findings of the domestic enquiry in the court and the court considered the same to be legal and valid. If an employee of the bank will remain absent unauthorizedly it will be difficult on the part of the bank to manage the establishment, and the Respondent bank has rightly passed the order of discharge of service with superannuation benefits. The order passed by the Respondent management is legal and valid which needs no interference and lastly submitted for dismissal of the claim of the Petitioner.

9. On consideration of the rival contentions of both the sides, it is seen that admittedly the Petitioner remained on leave for a period of 246 days and the said leave has been treated as extra ordinary leave and the same has been sanctioned. Subsequently the Petitioner remained absent unauthorizedly for a period of 598 days. Even though the Petitioner was found absent, he submitted his leave applications after inordinate delay, and there was no leave on the credit of the Petitioner, as such his absence was treated as unauthorised. Further, referring the attendance register produced from 1.4.2004 to 30.9.2006, in the disciplinary proceeding, the management witness stated that the Petitioner attended for duty only 239 days as against the total number of 913 days. Further, the leave letters and medical certificates submitted by the Petitioner for the period from 7.8.2006 to 18.8.2006; 19.8.2006 to 29.9.2006; 20.1.2006 to 27.1.2006; 2.2.2006 to 6.2.2006; 8.2.2006 to 17.2.2006, have been taken into consideration during the course of the enquiry. But the allegation of the Petitioner that his leave letters and medical certificates are not considered is not correct. On many occasions, the Petitioner was found absent unauthorizedly and subsequently submitted leave applications which has been considered by the Respondent. The domestic enquiry conducted by the Department has been treated as legal and valid. even though the Respondent has given an option to the Petitioner, if the court comes to the conclusion that the enquiry conducted by the Department was not fair and requires more evidence, the Respondent bank may be provided with an opportunity to lead evidence before this court. When the Petitioner himself considered the domestic enquiry conducted by the Respondent bank is legal and valid, Further, there was no option for the court to ask for more evidence to consider the validity of the domestic enquiry and lastly the court held the same to be legal and valid. When in the domestic enquiry the charges have been proved, and the unauthorised absence of the Petitioner has been proved, the Department has passed the order of discharge from service with the superannuation benefits. The Learned Counsel for the Respondent during the course of argument relied on a decision reported in the case of Chennai Metropolitan Water.. Vs. T.T. Murali Babu, Civil Appeal No. 1941 of 2014, decided by the Hon'ble Supreme Court of India, on 10.2.2014 wherein their Lordships observed the following: "..As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the court at his own will. Learned Counsel for the Respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the Respondent had remained absent for almost one year and seven months. The plea of absence of "habitual absenteeism" is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptation. We are disposed to think that the Respondent by remaining unauthorizedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate." In the case at hand the Petitioner has remained absent unauthorizedly and the charges levelled against the Petitioner has been well proved in the Departmental proceedings even though ample opportunity had been given, the Petitioner failed to challenge the domestic enquiry and conceded the same to be legal and valid. in view of the decision sited above, the punishment of discharge from service with superannuation benefits i.e., Pension, PF and Gratuity as would be due otherwise under the rules and regulations prevailing at the relevant time without disqualification from future employment awarded to the Petitioner by the Respondent bank is fair and reasonable and it needs no interference. Therefore, in such a case the question of reinstatement of the Petitioner in the service of the Respondent bank with continuity of service, back wages and attendant benefits does not arise and as such the action taken by the Respondent bank is legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point No.II**: In view of the findings arrived at Point No.I, it is held that the Petitioner is not entitled to the relief prayed for.

Thus, point No.II is answered accordingly.

Result:

In the result, the reference is answered as under:

The action of the management of State Bank of Hyderabad, Hyderabad in imposing punishment of dismissal from services with superannuation benefits to Sri M. Narasing Rao, Ex-Daftary, is justified. Hence, the Petitioner is not entitled to get any relief as prayed for. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 25th day of February, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Responden
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ सं. 38/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल–12012/19/2009–आईआर (बी.-I)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 23rd April, 2019

S.O. 643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2009) of 2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 23.04.2019.

[No. L-12012/19/2009-IR (B-I)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of March, 2019

INDUSTRIAL DISPUTE No. 38/2009

Between:

Sri J. Krishna Kishore,
No.204, Saideepthi Apartments,
Behind Mauli Water Tanks, Jawahar
Nagar, Moulaali,
Hyderabad -37. …Petitioner

AND

1. The Managing Director,
   State Bank of Patiala,
   Head Office, The Mall,
   Patiala (Punjab).

2. Dy.General Manager,
   State Bank of Patiala, Zonal Office,
   13, Arcade, World Trade Centre,
   Cuffe Parade, Mumbai – 400 005.

3. The Branch Manager,
   State Bank of Patiala,
   Abids Circle,
   Hyderabad. …Respondents

Appearances:

For the Petitioner : Sri William Burra, Advocate

For the Respondent : Sri M. Subrahmany Sastry, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/ 19/ 2009-IR(B.I) dated referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of Patiala, Hyderabad by not paying superannuation benefits i.e., pension, provident fund to the workman though the disciplinary authority imposed the punishment of discharge from service with all superannuation benefits i.e., pension and provident fund prevailing at the relevant time and without disqualifying from future employment, is justified and legal? If not, what relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 38/2009 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner was appointed as a Clerk cum Typist on 3.6.1980 and was discharging his duties with utmost diligence and there was no adverse remark against the Petitioner. While so, the Petitioner was served with a notice on 9.10.2004 on the allegation that there was a difference in the cash amount to the tune of Rs.2,50,000/- in the clearing. The said amount was not lost and was recovered during the normal process of the Respondent bank. It is further stated that the Petitioner had no intention to cheat the bank. The Petitioner being involved in a vicious circle was forced by the circumstances surrounding him to commit the mistake. The Petitioner clearly stated that the higher officers in the bank forced him to commit the mistake, and later they pressurized the Petitioner to accept the mistake without revealing the names of the higher authorities. It is further stated that he had been promised for a reward for pleading guilty and atleast a minor punishment will be imposed on him. But to the shock and surprise the authorities imposed major penalty of "removal from service with superannuation benefits i.e., pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment". Even though the Petitioner pleaded innocence he did not bear the fruit. Therefore, the Petitioner become jobless. He sought for some employment in the private company to earn his livelihood but it was in vain. It is also stated that when the Petitioner claimed terminal benefits in accordance with the termination order dated 3.5.2006, the Respondents rejected the same on the plea that he is not entitled for the terminal benefits. It is also stated that the Petitioner filed an application under the Gratuity Act, 1972 before the Controlling Authority and the Assistant Labour Commissioner (C), Hyderabad and the same was allowed. The appeal filed by the Respondents against the order of the Controlling Authority, before the Appellate Authority and the Regional Labour Commissioner(C) was dismissed. Even though the Controlling Authority passed the order disallowing the appeal filed by the Respondents, they did not challenge the same. The Petitioner further submits that on the same analogy the Petitioner is entitled to get other terminal benefits such as pension, provident fund etc.. the Petitioner also submits that he moved the matter to the conciliation authority but, it was ended in failure and lastly the same was referred to the Ministry of Labour and Employment, Government of India, New Delhi which results the above reference and with the above averments the Petitioner filed this claim petition claiming relief mentioned above.

3. **Respondents filed their counter with the averments in brief as follows**:

The Respondents appeared and filed their counter jointly challenging the claim of the Petitioner. The Respondents while admitting some of the facts, they also denied some of the material facts averred in the claim statement. It is stated that after service of charge sheet along with show cause notice, an enquiry was ordered to be conducted against the Petitioner giving reasonable opportunity to he Petitioner to defend his case. Ultimately, enquiry was conducted and after enquiry, the charges levelled against the Petitioner were proved. Even though one chance was given for personal hearing, the Petitioner did not appear. Therefore basing on the enquiry report and other materials, available on record the Disciplinary Authority imposed the punishment of removal from service vide order dated 3.5.2006. It is stated that the Petitioner vide his letter dated 9.10.2004 has admitted that he had acted fraudulently and made entries in the accounts of the Petitioner and he is only responsible for the same. He has also stated in his letter as to how he has manipulated the entries in the bank accounts, and there is difference of balance in the Reserve Bank of India statement. Therefore, the Petitioner has misappropriated the funds of the bank by making wrong entries in the accounts and the same was also reflected in RBI statement. Therefore, it is stated that the Petitioner has committed fraud with the bank and he has involved in the acts of fraud while he was in service which constitute acts of moral turpitude and the same were proved. The Petitioner has not challenged the punishment imposed on him by the Respondent. It is also stated that after relieving the Petitioner from service the Respondent bank has paid an amount of Rs.2,19,873/- towards PF account upto 31.12.2006 and recovered a sum of Rs.1,39,476/- from the Provident Fund account towards the subsistence

allowance paid to the Petitioner from October, 2004 to May, 2006 as the period was treated as period not spent on duty on 13.3.2007. Further, while the Petitioner was in service he has raised a loan for an amount of Rs.1,25,000/- from the Bank Employees Aided Co-operative Credit Society Ltd.. During the time of obtaining the loan the Petitioner has given a mandate requesting the 3rd Respondent branch to deduct from his salary an amount which may be due to him by the bank, any part of sum of money for which the society may apply to the bank for payment. Accordingly, basing on the said mandate given by the Petitioner, the society made a claim for an amount of Rs.83,824/- and the same was honoured by the bank, and he paid the remaining amount of Rs.80,396.05 to the society. In view of the same no amount is lying in the credit of the provident fund account of the Petitioner and he is not entitled to get any amounts as claimed. Therefore, the present I.D. is liable to be dismissed. It is also stated that the Petitioner is involved in the acts of fraudulent activities which was proved in the enquiry and therefore, the Petitioner is not entitled to pension. Further, as per rule 31 (1) of State Bank of Patiala Employees Pension Regulations, 1995 an employee who is removed from service shall forfeit the pension. The said provision is quoted below for ready reference: "An employee who is dismissed or removed or terminated from service shall forfeit the pension." In view of the above provision also the Petitioner is not entitled to get any pension or any benefits as claimed in the present ID and as such the present ID is liable to be dismissed. It is further submitted that the Petitioner is involved in fraudulent activities which constitute acts involving moral turpitude therefore, the Petitioner is not entitled to get any terminal benefits including gratuity, pension, provident fund. But Inspite of the same the Petitioner raised dispute claiming PF and other pension benefits by making untenable and unsustainable contentions. With the above averments the Respondents submitted to declare that the Petitioner is not entitled to get the amounts as claimed in the present ID and consequently the ID is liable to be dismissed.

4. As per the averments of both the sides made in the claim statement as well as in the counter, the following points are to be determined:

I. Whether the action of the management of State Bank of Patiala, Hyderabad by not paying superannuation benefits i.e., pension, provident fund to the workman though the disciplinary authority imposed the punishment of discharge from service with all superannuation benefits i.e., pension and provident fund prevailing at the relevant time and without disqualifying from future employment, is justified and legal?

II. If not, what relief the workman is entitled to?"

5. Both the parties have not adduced any evidence even though sufficient opportunity has been afforded to them.

6. Only counsel for the Petitioner advanced argument and filed written notes of arguments. The Respondents did not advance any arguments nor proved any document, to challenge the claim of the workman.

7. The Learned Counsel appearing on behalf of the Petitioner contended that the contents of the counter filed by the Respondents dated 27.2.2012 is totally false and incorrect and the Respondents are put to strict proof of the same. The Respondents either failed to adduce any evidence or to cross examine the Petitioner's witnesses after marking the documents. therefore mere filing counter and documents without proving the contents therein has no evidentiary value in the eye of law. He further contended that the Petitioner has filed the termination order dated 3.5.2006 and the Respondents have also filed the copy of the said order dated 3.5.2006. The termination order is the very crucial document for deciding the case. The contents of the termination order would show that the Petitioner is removed from service with superannuation benefits, i.e., Pension, and/or Provident Fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment. The Petitioner is therefore seeking for payment of gratuity, provident fund and pension and no other relief. But the Respondent's management is misinterpreting the contents of the termination order dated 3.5.2006 and denying the Petitioner his legitimate dues in the form of gratuity, provident fund and pension. Therefore, the Petitioner seeking justice from this Tribunal. The Petitioner is entitled to get pension, contributory provident fund, gratuity etc., with 18% interest p.a. along with the costs and compensation and as this Hon'ble court deems fit and proper in the circumstances.

8. Even though sufficient opportunity has been given to the Respondents to advance argument in order to challenge the claim of the Petitioner, the Respondent did not come forward to advance any argument to challenge the claim of the Petitioner.

9. On perusal of the averments made in the claim statement as well as in the counter and on hearing the counsel for the Petitioner it is seen that the Petitioner has been removed from service on the ground of misappropriation of bank's money. Both the parties have relied on the same termination order wherein the Disciplinary Authority has passed the order i.e., removal from service with superannuation benefits, i.e., pension and/or provident fund and gratuity as would be due otherwise under the rules and regulations prevailing at the relevant time and without disqualification from future employment. In terms of clause 6 (b) of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.4.2002. In the instant case the Petitioner has been denied by the Respondents to provide gratuity and pension even though the Respondents have preferred appeal before the Appellate Authority under Payment of Gratuity Act, 1972 and the Regional Labour Commissioner(C), Hyderabad. This appeal was upheld and the order of the Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (C) was upheld, which clearly indicates that the Petitioner is entitled to get the gratuity, pension as would be due otherwise under the Rules and Regulations prevailing at the time of passing the order. But the Respondents have not come forward to say under what

authority they have withhold the benefits of gratuity, and pension of the Petitioner. In the circumstances stated above, the Petitioner is entitled to get all the superannuation benefits as claimed by him in his claim petition and as such, the action of the Respondent management of State Bank of Patiala, Hyderabad by not paying superannuation benefits i.e., pension, provident fund to the workman even though the disciplinary authority imposed the punishment of discharge from service with all superannuation benefits i.e., pension and provident fund prevailing at the relevant time and without disqualifying from future employment, is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point No.II**: In view of the findings made at Point No.I, the Petitioner is entitled to get his superannuation benefits like pension, gratuity and Provident Fund if not paid. It is seen that since the date of passing of the termination order, superannuation benefits of the Petitioner has been withheld causing a financial loss to the Petitioner. Therefore, the Petitioner is entitled to get the same with interest of 6% p.a. and not entitled to get any other relief.

Thus, Point No.II is answered accordingly.

Result:

In the result the reference is answered as under:

The action of the management of State Bank of Patiala, Hyderabad by not paying superannuation benefits i.e., pension, provident fund to the workman though the disciplinary authority imposed the punishment of discharge from service with all superannuation benefits i.e., pension and provident fund prevailing at the relevant time and without disqualifying from future employment, is not justified and legal. The Petitioner is entitled to get his superannuation benefits like pension, gratuity and Provident Fund if not paid. It is seen that since the date of passing of the termination order, superannuation benefits of the Petitioner has been withheld causing a great financial loss to the Petitioner. Therefore, the Petitioner is entitled to get the same with interest of 6% p.a. and not entitled to get any other relief.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 25th day of March, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 644.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ सं. 13/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल–12025/01/2019–आईआर (बी-I)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 23rd April, 2019

S.O. 644.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen received by the Central Government on 23.04.2019.

[No. L-12025/01/2019-IR (B-I)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan , Presiding Officer

Dated the 25th day of March, 2019

INDUSTRIAL DISPUTE L.C.No.13/2005

Between :

Sri Ajmera Venkata Ramulu,
S/oSri Ramji,
R/o Gandhinagar Village,
Sarapaka Post,
Burgampahad mandal,
Khammam District. …Petitioner

AND

1. The Branch Manager,
State Bank of Hyderabad,
Venkatapuram Branch,
Khammam District.

2. The Assistant General Manager,
Region-I, State Bank of Hyderabad,
Regional Office, Wyara Road,
Khammam.

3. The Deputy General Manager,
State Bank of Hyderabad,
Zonal Office, J.P.N. Road,
Warangal.

4. The Managing Director,
State Bank of Hyderabad,
Head Office, Gunfoundry,
Hyderabad. …Respondents

Appearances:

For the Petitioner : Sri Jayachandra P. Pasam, Advocate

For the Respondent: Sri A.V.S.S. Prasad, Advocate

AWARD

Sri Ajmera Venakata Ramulu, who worked as a Clerk (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for declaring the proceeding No. R.II/Grade-I/8671 dated 4.2.2004 compulsorily retiring the Petitioner and the order made in proceeding No.ZO(W)/GR-I/DPS/6391 dated 15.1.2005 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was appointed as a cashier cum clerk having been selected by the Banking Service Commission in the year 1996, at Fertilizer City, Karimngaar district on 16.8.1996. He was transferred to Ramagundam and thereafter to Venkatapuram. The Petitioner belongs to Scheduled Tribe. working in Venkatachalam branch of the Respondent bank and was suspended from services on 1.4.2002 on the allegation of Embezzlement. Simultaneously, a police complaint was given on the same set of facts on the same day and FIR was registered on 2.4.2002. Subsequently, the Petitioner was arrested and was released on bail on 6.11.2002. A Departmental enquiry was commenced on 18.1.2003 and preliminary enquiry was conducted on that day. The Petitioner was directed to engage a defence representative. One defence representative was appointed and an objection was taken by him on 10.2.2003 on the basis of para 4 of the provisions of Bi-partite settlement dated 10.4.2002. No answer was given to the said objection. Due to his wife's pregnancy, illness and subsequent cesarean operation the Petitioner could not attend the enquiry on 16.6.2003 and also on 18.6.2003 for her subsequent illness. A telegram was given by the applicant on that date seeking adjournment.

Inspite of that, the Petitioner was set ex-parte and the Department proceeded with the enquiry in his absence. After the ex-parte enquiry the applicant was asked to make his submissions through the letter of the bank dated 5.9.2003. He made his submissions on 7.10.2003 complaining against violation of para 4 of bipartite settlement and conducting the ex-parte enquiry in violation of principles of natural justice. But without considering any of his submissions, a show cause notice dated 13.1.2004 was issued to him. The Petitioner submitted his reply on 10.2.2004 reiterating his contentions. Subsequently, an order of compulsory retirement was passed on 4.2.2004 which was served on him on 21.2.2004. It is stated that the enquiry was held in violation of the principles of natural justice. The Petitioner preferred an appeal challenging the order dated 4.2.2004 before the Dy. General Manager / Appellate Authority. It is submitted that the Petitioner suffered depression due to which he could not prefer the appeal within time and there was delay. The same was explained to the Appellate Authority. But the Appellate Authority rejected the appeal on the ground that the appeal was to be preferred within 45 days from the date of the impugned order, but it was preferred after lapse of more than 10 months from the date of such order. The said order is also illegal and void, since every day delay has been explained, and the Appellate Authority could not see as to how a sick man can prefer appeal. No proper reasons are given for rejection of the appeal and without considering it on merits though there is no impediment to do so It is stated that the Petitioner is from scheduled caste, but his case was not considered sympathetically. On the other hand it was considered with harshness, even though there is no loss to the bank. There is violation of the principles of natural justice and an enquiry cannot be conducted when one criminal proceeding is pending. It is further stated that CC No.1161/2002 is pending on the file of the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, on the same facts. It is also stated that as per para 4 of the Bipartite settlement, an employee cannot be terminated from service when the criminal proceeding is pending. The Petitioner could not secure alternative employment inspite of his best efforts and he and his family are suffering from financial hardships. Therefore, the Petitioner has filed this case claiming the reliefs mentioned above.

3. **The Respondents filed counter with averments in brief as follows**:

The Respondents while denying some of the facts averred in the claim statement have stated that the Petitioner was appointed as a Cashier cum Clerk in the State Bank of Hyderabad, at Fertilizer City, Karimnagar District on 16.8.1996 and thereafter he was transferred to Ramagundam and thereafter to Venkatapuram. It is stated that the Petitioner belongs to Scheduled Tribe and he was suspended from service on 1.4.2002, on the allegations of Embezzlement. A Police complaint was filed on the same facts, F.I.R. was registered and the case was booked vide Crime No.16/2002, under Section 409 and 420 of IPC and that the case was numbered as 1161/2002 and the same was pending on the file of the Judicial Magistrate First Class, at Bhadrachalam. One disciplinary proceedings under gross misconduct were initiated against the Petitioner by the 1st Respondent and a charge sheet has been issued against him on 16.9.2002. The Petitioner did not submit any reply in his defence though reasonable opportunity was given to him. Therefore, deeming that the Petitioner got no reply to make, a Departmental enquiry was ordered appointing one Enquiry Officer. The Petitioner attended the enquiry initially and thereafter failed to attend the same and he was set ex-parte by the Enquiry Officer. On conclusion of the enquiry, the Enquiry Officer forwarded the day to day proceedings of the enquiry and the documents marked for the management, to the Petitioner under the cover of letter dated 21.11.2003 requiring him to submit his defence brief. The Petitioner received the same on 10.12.2003 but failed to send any reply. Thereafter the Enquiry Officer submitted his report dated 24.12.2003 to the Disciplinary Authority, i.e., 2nd Respondent, who forwarded the copy of the said report to the Petitioner vide letter dated 29.12.2003 asking him to submit his reply/defence in brief. The Disciplinary Authority has gone through the entire record and the enquiry proceeding independently and proposed to imposed the penalty of compulsory retirement from the bank's service and a show cause notice dated 31.1.2004 was served on the Petitioner. But no reply was given by the Petitioner within the time stipulated or later, so the Disciplinary Authority proceeded to pass the order of compulsory retirement with superannuation benefits and gave liberty to prefer appeal within 15 days from the date of the said order. Since the appeal was preferred after lapse of 10 months, the Appellate Authority rightly dismissed the appeal. The Petitioner has tried to protract the proceedings and also tried to stall the same. He filed a writ petition against the Respondent bank seeking for writ of mandamous declaring the action of the bank in seeking to conduct an enquiry against the Petitioner as illegal arbitrary and discriminatory and in violation of articles 14 and 16 of the Constitution of India apart from contrary to bipartite settlement. However, the Hon'ble High Court of A.P., dismissed the writ petition stating that there are no merits in the same. There is no violation of the principles of natural justice considering the gravity of charges, non-interference of the order of the Disciplinary Authority by the Appellate Authority is perfect as to the settlement arrived between the management and the workmen. It is submitted that the orders of compulsory retirement with superannuation benefits as passed by Respondent No.2 is perfectly in order considering the misconduct of gravity of charges, and the non-interference of the order by Respondent No.3 is also perfect as per the settlement arrived by the management and the workmen and with the above averments the Respondents have submitted for dismissal of the claim of the Petitioner.

4. The domestic enquiry conducted in this case is held as legal and valid vide order dated 30.5.2013.

5. I have already heard the Learned Counsel for both the parties in the matter.

6. **The Points for determination are**:

I. Whether the action of the Respondents' management in issuing order of compulsory retirement dated 4.2.2004 to the Petitioner Sri Ajmera Venkata Ramulu, Cashier cum Clerk while a criminal case is pending against him is legal and justified?

II. If not, to what relief the Petitioner is entitled for?

7. **Point No. I** : The Learned Counsel appearing for the Petitioner contended that while the Petitioner was working at Venkatachalam branch of the Respondent bank he was suspended from services of the bank on 1.4.2002 on the allegation of Embezzlement. Simultaneously, one police complaint was initiated against the Petitioner on the same set of facts on the same day and FIR was registered on 2.4.2002. One departmental enquiry was commenced on 18.1.2003 and preliminary enquiry was conducted on that day. Subsequently, the Petitioner engaged one defence representative and an objection was taken by him on 10.2.2003 on the basis of para 4 of the provisions of Bi-partite settlement dated 10.4.2002. No answer was given to the said objection. Thereafter the enquiry was posted to 29.5.2003. But the Petitioner could not attend the enquiry. There after the enquiry was adjourned to 18.6.2003. But the Petitioner could not attend the enquiry on that date due to illness of his wife. The Petitioner took adjournment. But, inspite of giving adjournment he was set ex-parte and the enquiry was proceeded in his absence. After completion of the ex-parte enquiry the Petitioner was asked to make his submissions through a letter of the bank dated 5.9.2003. The Petitioner made his submission on 7.10.2003 complaining against violation of para 4 of bipartite settlement and conducting such ex-parte enquiry in violation of the principles of natural justice. Without considering any of his submissions, a show cause notice dated 13.1.2004 was issued to him. The Petitioner submitted his reply on 10.2.2004 reiterating his contentions. Subsequently, an order of compulsory retirement was passed on 4.2.2004 which was served on the Petitioner on 21.2.2004. The enquiry was held in violation of the principles of natural justice. Even though the Petitioner moved before the Appellate Authority, the Appellate Authority rejected the appeal of the Petitioner on the ground of delay in filing the appeal. It is further contended that the Appellate Authority has also rejected the appeal without going into the minute thing of the case that the Petitioner is an ST man. His case was not considered, but it was handled with harshness, even though there is no loss to the bank. It is also contended that CC No.1161/2002 is pending on the file of the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, on the same facts. As per para 4 of the Bipartite settlement, an employee cannot be terminated from service when the criminal proceeding is pending. It is also contended that the Petitioner could not secure alternative employment inspite of his best efforts and he is in financial hardship. He also contended that the action of the Respondent vide proceeding No. R.II/Grade-I/8671 dated 4.2.2004 in compulsorily retiring the Petitioner and the order passed in proceeding No.ZO(W)/GR-I/DPS/6391 dated 15.1.2005 is illegal and arbitrary. It is submitted to pass an award directing the Respondent management to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that admittedly, the Petitioner was suspended from service on the allegation of embezzlement on 1.4.2002 and on the same allegation a report was also given to the police on the same day. Basing on the report, Police registered a case bearing No.16/2002, under Section 409 and 420 of the IPC. The disciplinary proceedings under gross misconduct were initiated against the Petitioner by the 1st Respondent and a charge sheet has been issued against him on 16.9.2002. The Petitioner did not submit any reply in his defence even though reasonable opportunity was given to him. Therefore, deeming that he got no reply to make, a Departmental enquiry was conducted. The Petitioner attended the enquiry initially and thereafter failed to attend the same and he was set ex-parte by the Enquiry Officer. On conclusion of the enquiry, the Enquiry Officer forwarded the day to day proceedings of the enquiry and the documents marked for the management, to the Petitioner under the cover of letter dated 21.11.2003 requiring him to submit his defence. The Petitioner received the same on 10.12.2003, but failed to send any reply. Thereafter the Enquiry Officer submitted his report dated 24.12.2003 to the Disciplinary Authority, i.e., 2nd Respondent, who forwarded the copy of the said report to the Petitioner *vide* letter dated 29.12.2003 asking him to submit his reply/defence brief. The Disciplinary Authority has gone through the entire record and the enquiry proceeding independently and proposed to impose the penalty of compulsory retirement from the bank's service and a show cause notice dated 31.1.2004 was served. But the Petitioner was failed to submit his reply within the stipulated time. Thereafter, the Disciplinary Authority proceeded to pass an order of compulsory retirement with superannuation benefits and gave liberty to the Petitioner to file appeal within 15 days time from the date of the order. But the Petitioner did not prefer appeal in time and after delay of 10 months, the Appellate Authority rightly dismissed the appeal. The Petitioner has tried to protract the proceedings and also tried to stall the same. He filed a writ petition against the Respondent bank seeking for writ of mandamous declaring the action of the bank in seeking to conduct an enquiry against the Petitioner as illegal arbitrary and discriminatory and in violation of articles 14 and 16 of the Constitution of India apart from contrary to the bipartite settlement. However, Hon'ble High Court of A.P., dismissed the writ petition stating that there are no merits in the same. It is also contended that, the enquiry has been conducted properly, there is no violation of the principles of natural justice and considering the gravity of the charges, the Disciplinary Authority has passed the order as, the Appellate Authority has also passed the order as per Law. The Respondent management has rightly passed the order of compulsory retirement with superannuation benefits to the Petitioner and the order of Respondent management is legal and justified and it needs no interference of this Tribunal.

9. On consideration of the rival contentions of both the sides and the documents available on record, it is seen that, the domestic enquiry conducted in this case by the management has been declared as legal and justified by this Tribunal *vide* order dated 30.5.2013. The Petitioner did not challenge the order of this Tribunal. The Petitioner has claimed that the domestic enquiry has not been done fairly, and the Petitioner was not given fair opportunity to defend his case during the enquiry. But after hearing both the sides at length this Tribunal has passed order stating that the domestic enquiry has been conducted properly and there is no violation of the principles of natural justice. The Petitioner has claimed that while the criminal case was pending the management has wrongly conducted the Departmental proceedings violating Para 4 of the Bi partite settlement. In the Departmental Enquiry the Petitioner has been given ample opportunity to defend his case. But intentionally the Petitioner did not attend the enquiry and tried to linger or protract the proceedings. The enquiry has been conducted independently and after conclusion of the enquiry the charges have been proved against the Petitioner. It is stated that in disciplinary proceedings, the charges are to be proved on preponderance of probabilities and not on proof beyond reasonable doubt". In the enquiry the Enquiry Officer has elaborately considered the charges and the materials produced before him by the bank. But in the criminal proceedings, the court can consider all the evidence available by him beyond all reasonable doubt. When in the Departmental enquiry, the charges have been proved, and inspite of taking several opportunities, the Petitioner failed to defend his case, and subsequently, claimed that the enquiry has not been conducted properly and the principles of natural justice have been violated, the same cannot be accepted, as it is a plea of after thought. The Petitioner being an employee of a bank has been involved in embezzlement case and the Respondent management after considering the result of the Departmental proceedings has rightly passed the order of compulsory retirement with superannuation benefit and such order of the management needs no interference. As such, the action taken by the first Respondent vide proceeding No.R.II/Grade-I/8671 dated 4.2.2004 compulsorily retiring the Petitioner and the order made in No.ZO(W)/GR.I/DPS/6391 dated 15.1.2005 is not illegal and arbitrary and the Respondent bank has rightly taken action against the Petitioner.

Thus, Point No.I is answered accordingly.

10. **Point No.II**: in view of the findings given in Point No.I, the Petitioner is not entitled to get any relief as prayed for.

Thus, Point No.II is answered accordingly.

ORDER

In view of the findings given above, it is held that the action of the Respondents' management in issuing order of compulsory retirement dated 4.2.2004 to the Petitioner Sri Ajmera Venkata Ramulu, Cashier cum Clerk while a criminal case is pending against him is legal and justified and the Petitioner is not entitled to get any relief as prayed for. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 25th day of March, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 84/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल—39025/01/2019—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 23rd April, 2019

S.O. 645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2008) of 2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Hyderabad as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen received by the Central Government on 23.04.2019.

[No. L-39025/01/29-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of February, 2019

INDUSTRIAL DISPUTE L.C.No. 84/2008

Between :

Sri B. Venkateswara Rao,
S/o B.V.V. Satyanarayana Murthy,
H.No.67-10-02, Ashoknagar,
Kakinada – 533 033. E.G. District. …Petitioner

AND

1. The Regional Manager,
   M/s. Central Bank of India,
   P.B. No.727, Benz Circle,
   Bandar Road, Vijayawada -520 010.
2. The Regional Manager,
   M/s. Central Bank of India,
   P.B. No.727, Benz Circle,
   Bandar Road, Vijayawada -520 010.
3. The Asst. General Manager,
   M/s. Central Bank of India,
   Hyderabad Zonal Office,
   Bank Street, Koti,
   Hyderabad – 500 095. ...Respondents

Appearances :

For the Petitioner : M/s. D. Ravisankar Rao, Ch. Venkata Raju, K. Raghuram Reddy & M. Venkata Sastry, Advocates

For the Respondent : Ch. Siva Reddy, Advocate

AWARD

Sri B. Venkateswara Rao, who worked as a Clerk cum Typist (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for declaring the proceeding No.VRO:HRD:DAD:2005-2006:76 dated 12.12.2005 issued by the Disciplinary Authority and Proceeding No. ZO:HRD:DAD: 2006-2007: 289A dated 2.5.2006 issued by the Appellate Authority as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner joined in the services of the Respondents' bank in the year 1986 as a clerk cum typist and he was transferred to Kakinada branch in the month of September, 1993. The Petitioner served under the Respondent bank without any blemish. While so the Petitioner was falsely implicated in a criminal case in Crime No:99/2002 of II Town Law & Police Station, Kakinada and was arrested. The above issue was published in the local daily news papers on 2.4.2002 alleging that the Petitioner has busted a fake note racket and was arrested and kept under custody. The said crime was referred as a Sessions Case No.261/2003 in the court of Hon'ble Principle Asst. Sessions Judge, Kakinada, wherein the Petitioner was shown as accused No.1 along with four others. The Petitioner was charged for the offence

U/s 489-A, 489-B, 489-C and 489-D of Indian Penal Code in short the I.P.C.. In the mean while the Respondent bank basing on the said news item published issued memo No.VRO:PRS:DAW:02-03-01 dated 2.4.2002 to the Petitioner placing him under suspension with immediate effect. It is also stated that the Prl. Asst. Sessions Judge Court delivered judgment in the said criminal case registered against the Petitioner and four others wherein the Petitioner along with others were acquitted. In that criminal case the Petitioner was not found guilty of the charges and was acquitted. And the said judgement has become final, as no appeal has been preferred against the order of acquittal. It is also stated that the after acquittal in the above said criminal case, the Petitioner made representation dated 28.10.2004 to the Respondent bank seeking his reinstatement into service duly enclosing the copy of the judgement made in the Sessions case No.261/2003. But the Respondent bank instead of taking him into service issued memo bearing No.VRO:PRS:DAD:2005-2006:9 dated 2.6.2005 calling upon him as to why disciplinary action should not be initiated against him. The said memo was issued slowly on the basis of certain observation made by the Hon'ble Principle Asst. Judge, Kakinada in Sessions Case No.:261/2003. The Petitioner in his reply to the said notice submitted his explanation dated 16.6.2005 stating that the Petitioner was acquitted in the criminal case initiated against him and the same was not been treated as misconduct warranting disciplinary action and in any case, the observation of the Hon'ble Court cannot be interpreted in a manner which do not form part of the misconduct as enumerated in par 5 of the settlement dated 10.4.2002 and requested to withdraw the memo and to take him into service with all consequential benefits. But the Respondent bank in a cryptic order rejected the explanation through a memo dated 21.7.2005 and issued charge sheet dated 5.8.2008 alleging that the Petitioner has committed gross misconduct under para 5(J) of Memorandum of Settlement of Disciplinary Action Procedure for Award Staff and appointed Sri Nagraju, Sr. manager, Zonal Office, Hyderabad as Enquiry Officer. In the said enquiry the management examined one witness and marked 4 (four) documents, including the copy of the judgement made in Session's case No.261/2003 dated 30.9.2004 passed by the Asst. Sessions Judge. It is also stated that no document is filed and get marked as regard to the charges framed against the Petitioner and further though the management failed to prove the contents of the documents marked as Ex.ME1 to ME-3, the Enquiry Officer without any basis and taking the contents of the said documents as gospel truth illegally held that the charges levelled against the Petitioner was proved vide his report dated 14.11.2005. It is also stated that the Enquiry Officer erred in holding that the charges levelled against the Petitioner was proved without there being any allegations against the Petitioner was placed before the Enquiry Officer. The Disciplinary Authority concurred with the findings of the Enquiry Officer and called upon the Petitioner to submit objections if any through proceedings No.VRO:HRD:DAD:2005-2006:69 dated 17.11.2005. The Petitioner submitted a detailed explanation on 2.12.2005. Thereafter a show cause notice was issued to the Petitioner vide proceedings No.VRO:HRD:DAD:2005-2006:73 dated 6.12.2006 asking the Petitioner to submit explanation in the hearing fixed on 12.12.2006 on the proposed punishment of dismissal from service without notice under Para 6(a) of Memorandum of Settlement on Disciplinary Action Procedure for Award Staff dated 10.4.2002 and for which the Petitioner also appeared before the Disciplinary Authority and submitted his explanation. The Disciplinary Authority without considering the explanation and the facts and circumstances of the case imposed the punishment of dismissal from service without notice through proceeding No.VRO:HRD:DAD:2005-2006:76 dated 12.12.2005. It is also submitted that being aggrieved by the above said punishment imposed against him, the Petitioner preferred Departmental appeal to the Appellate Authority / Assistant General Manager through his appeal dated 25.1.2006. The Petitioner was informed through proceedings No. VRO:HRD:DAD:2006:2007:24 dated 9.5.2006 that the Appellate Authority *vide* order bearing No. ZO: HRD: DAD: 2006-2007:289A, dated 2.5.2006 has confirmed the penalty awarded by the Disciplinary Authority and dismissal from bank service without notice under Para 6(a) of Memorandum of Settlement on Disciplinary Action procedure for award staff dated 10.4.2002. It is stated that the Disciplinary Authority and the Appellate Authority failed to consider the objection raised by the Petitioner without giving regard to the findings of the Enquiry Officer and mechanically passed the orders dismissing the Petitioner from service. It is further stated that the entire proceeding initiated by the management are illegal, arbitrary and amounts to victimization. The charges framed against the Petitioner are wholly illegal and baseless. It is not the case of the management that the Petitioner was involved in fake note racket. The Enquiry Officer while arriving at his findings relied upon the clipping of the news paper and photograph published in news paper and the same cannot establish the charges levelled against the Petitioner. In fact no witness have stated anything against the Petitioner that he involved in the fake note racket and in absence of the same, the Enquiry Officer illegally without any basis arrived at a conclusion that the charges are proved and as such the said findings are perverse and are liable to be set aside. It is further stated that the observation made by the Principle Assistant Sessions Court cannot be taken into consideration while arriving at findings and in any case there is no material placed before the Enquiry Officer to arrive at such findings and as such the order of dismissal is liable to be set aside. It is also stated that the Enquiry Officer proceeded with enquiry in total violation of the principles of natural justice and as such the punishment imposed on the Petitioner based on such findings which is liable to be set aside. It is further submitted that the Disciplinary Authority and Appellate Authority totally violated the principles of natural justice and though the charges were not proved, erred in imposing the punishment, only basing on the news item and certain observations of the Hon'ble Sessions Court. Therefore, the impugned order of dismissal is liable to be set aside. It is also stated that the Respondent bank failed to consider that the FIR and the confessional statements produced before the Hon'ble Sessions Court were not proved and in such circumstances, the question of tarnishing the bank's image does not arise and as such the impugned order is liable to be set aside. It is also stated that ever since the date of dismissal from service the Petitioner could not secure any alternative employment inspite of his best efforts. The Petitioner is the only earning

member in the family and his old sick mother is fully depending on the income of the Petitioner as his father was expired in the year 2002. The Petitioner sold all the fixed assets, and his financial position became bad. In the above circumstances, the Petitioner prayed this Tribunal to hold that the action taken by the management bank in dismissing the Petitioner from service is illegal and unjustified and consequently pass an award directing the Respondent bank to reinstate the Petitioner into service with all consequential benefits including back wages.

3. **The Respondents filed counter with the averments in brief as follows**:

The Respondents filed counter denying all the facts mentioned in the claim petition stating that the Petitioner is put to strict proof of each and every allegations made by him. the Respondents also stated that even though the Petitioner was acquitted in the criminal case bearing No.261/2003, it is not an honourable acquittal but on benefit of doubt. In fact the involvement of the Petitioner in the fake note racket was published in the news papers. The Respondent bank is a public sector bank, the Petitioner is the employee of the said bank. Since the name of the Petitioner was published in the newspaper as he was involved in the fake note racket, which will tarnish the image of the bank. Even though the Petitioner was acquitted in the criminal case, the Hon'ble Court has made adverse remarks on the police for not bringing proper witnesses and also made observation that he Petitioner has managed the witnesses. Therefore, the Respondent bank has issued a Memorandum bearing No.VRO/PRS/DA//2005-06/09 dated 2.6.2005 calling for explanation from the Petitioner as to why disciplinary action should not be initiated against him. Since the explanation given by the Petitioner was not satisfactory, the Respondent bank issued charge sheet dated 5.8.2008 as the Petitioner has committed gross misconduct under Para 5(j) of Memorandum of Settlement of Disciplinary Action Procedure for Award Staff dated 10.4.2002 and the Disciplinary Authority has appointed Mr. Nagaraj, the Senior Manager of the bank as the Enquiry Officer and Mr. Ch. V.S.N. Murthy, Branch Manager, Samalkot Branch as the Presenting Officer. During the enquiry proceeding, the Petitioner has participated in the enquiry and he was assisted by the defence representative. The Petitioner was given ample opportunity to verify the documents and to cross examine the witnesses of the management in the enquiry. The enquiry conducted against the Petitioner was fair and reasonable and all opportunities were given to the Petitioner for making his submissions. After completion of the enquiry, the Enquiry Officer has submitted his report holding that the charges against the Petitioner were proved as the Petitioner in bad association with others indulged in heinous crime and unsocial activities that lead to adverse publicity in press and managed to hush up the witnesses not to speak the truth in the court. These acts not only lowered or deprived his character as a bank employee but also tarnished the image of the bank in the eyes of the public. Thus, these acts are prejudicial and detrimental to the interest of the bank. It is also stated that in the Departmental Enquiry strict rules of evidence are not applicable and the principle of preponderances of probabilities shall be applied. The judgement given by the Hon'ble Principal Assistant Judge, Kakinada in Sessions case No.261/2003 clearly shows that the Petitioner was involved in the printing and circulation of fake currency and the Petitioner has managed the witnesses not to open their mouth, which clearly proves from the charges framed against him. It is stated that the Enquiry Officer's report was sent to the Petitioner and sought for his submissions. After considering the Enquiry Officer's report and all the proceedings in the enquiry and also submissions made by the Petitioner, the Disciplinary Authority has concurred with the report of the Enquiry Officer and proposed to award the punishment of "dismissal from bank service without notice" under para 6(a) of Memorandum of Settlement of Disciplinary Action Procedure for Award Staff dated 10.4.2002 and issued 2nd show cause notice dated 6.12.2005 for making any submission. The Petitioner was given personal hearing on 12.12.2005 and finally he was given the punishment of dismissal from bank's service without notice. Challenging the above dismissal order the Petitioner preferred appeal to the Appellate Authority, who has confirmed the punishment awarded by the Disciplinary Authority vide his orders bearing No.VRO/HRD/DAD/2006-07/289A dated 2.5.2006. It is also stated that the local daily paper "Eenadu" of Kakinada Edition had published the news item on 2.4.2002 to the effect that Sri Bodapati Venkateswara Rao, Clerk of Central Bank of India, Kakinada Branch was arrested by the police on 1.4.2002 while he was in possession of Rs.500/- fake currency notes 8 in number at Sudha Wine Shop, Kothapet. It was also reported that he was doing the circulation of the fake currency from his house and the computer system and other allied equipments installed in his house for preparation of counter feet currency notes were also seized by the police. The photo of the Petitioner was also published in the said paper. The news item published in the paper has certainly adverse impact on the bank in which he was working. It is also stated that as the acts of the Petitioner was prejudicial and detrimental to the interest of the bank, and he was acquitted on the benefit of doubt but not on merits by the Criminal court, the Respondent bank has proceeded with the Departmental enquiry wherein full opportunity has been given to the Petitioner to defend himself and cross examine the witnesses. It is stated that the Respondent bank is a nationalized bank and dealing with the public money. The involvement of the Petitioner in such a crime is certainly a major misconduct. The punishment ordered by the Disciplinary Authority and it was confirmed by the Appellate Authority is very reasonable and no punishment less than dismissal shall be given to the Petitioner, and as such the punishment awarded by the Respondents' bank to the Petitioner is reasonable. It is also stated that in the bank's service, if anybody is involved in any heinous crimes more particularly connected to the monetary affairs, no sympathy shall be shown to such persons. The Apex Court time and again has held that undue sympathy shall not be shown to such persons who commit gross misconduct. Therefore, the Petitioner herein shall not be shown any sympathy considering the crime and misconduct he has been involved in and with the above averments, the Respondents' bank submitted to reject the claim of the Petitioner and to uphold the punishment awarded against him, and to pass such other/orders as this Tribunal may deem fit and proper in the circumstances of the case.

4. The domestic enquiry conducted in this case by the management is held as legal and valid as the Petitioner does not want to press it, *vide* order dated 15.7.2016.

5. I have already heard the Learned Counsels for both the parties who have already submitted their written notes of arguments and the same has been taken into consideration.

6. **The points for determination are**:

I. Whether the action taken by the management bank in dismissing the Petitioner Sri B. Venkateswara Rao from service is legal and justified?

II. If not, to what relief the Petitioner is entitled for?

7. **Point No.I**: The Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner workman was working as a clerk cum typist in the Respondents' bank in the year 1986 and continued there till the month of September, 1993 without any blemish. Suddenly, the Petitioner was involved in a criminal case bearing No.99 of 2002 in II Town Law and Order Police Station and was arrested. The above news was published in a local daily newspaper on 2.4.2002 alleging that the Petitioner herein was involved in a fake note racket. The criminal case was pending in the court of Principle Assist. Sessions Judge, Kakinada and after hearing, the Petitioner was acquitted from that case. The Petitioner was charged for the offence U/Sec. 489-A, 489-B, 489-C and 489-D of IPC in the above stated case. In the mean time the Respondent bank basing on the said news item published in the daily news paper issued memo to the Petitioner placing him under suspension with immediate effect. The Asst. Sessions Judge Court after closure of the case delivered the judgement in that criminal case and acquitted the Petitioner along with others from the charges levelled against them. After acquittal from the criminal case the Petitioner made a representation to the Respondent bank for his reinstatement into service duly enclosing the copy of the judgement passed by the Asst. Sessions Judge in Sessions case No.261/2003. But the Respondent bank without considering the representation of the Petitioner initiated the Departmental proceeding and conducted one domestic enquiry, in the order of the domestic enquiry the charges levelled against the Petitioner were proved and order was passed for dismissal of the Petitioner from service. The Petitioner preferred an appeal before the Disciplinary Authority, but the same was rejected. The Petitioner also filed a review petition for reconsideration of the dismissal order and the same was also rejected. It is contended that since the date of dismissal from service the Petitioner is unemployed and did not get any employment even after taking so many efforts. The financial condition of the Petitioner is very worse. The Petitioner is the only earning member of his family, and his old sick mother is fully depending on the income of the Petitioner as his father was expired in the year 2002. The Petitioner sold all his movable and immovable assets and his financial condition became bad. It is also contended that since the Petitioner has been acquitted from the criminal charges, the Departmental enquiry has been conducted without following proper prospective of Law. The Learned Counsel for the Petitioner also contended that basing on the fake news item published in the daily news paper the Respondent management has initiated a false Departmental proceeding. No witnesses have been examined in the Departmental enquiry and no eye witnesses have been examined, and none of the witnesses have stated anything against the Petitioner. Even though FIR was lodged against the Petitioner, it was not proved. The FIR itself is not an evidence without actual proof, and the facts stated therein. In support of his contention he relied on a decision of the Hon'ble Apex Court reported in 2009 (2) SCC 570 Roop Singh Negi Versus Punjab National Bank and another. He further contended that the allegation on which Departmental enquiry has been initiated and a criminal proceeding has been conducted, in which the competent court passed the order of acquittal and when a competent court has observed that the Petitioner is not guilty of the allegation of charges of misconduct it got no weight at all. He also relied on a another decision of the Hon'ble Apex Court, reported in (1972) 4 SCC 618, between Union of India Vs. Sardar Bahadur and relying on the above decision, the Learned Counsel for the Petitioner contended that since the Petitioner has been acquitted from the criminal charges, the Department should not pass the order of dismissal and the order of dismissal passed by the Respondent bank is quite illegal and it needs interference of this Tribunal. Lastly, he contended to pass order declaring the order passed by the Respondent Bank as illegal and unjustified and to pass an order to reinstate the Petitioner into service granting all consequential reliefs including back wages.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent bank submitted that the Petitioner being an employee of a bank had been involved in the fake note racket along with others and he had been arrested and remanded to Police custody. He faced trial in a sessions case. But he managed to stop the mouth of the witnesses for which the witnesses did not disclose anything against the Petitioner and ultimately the case was ended in acquittal. When news item published in the daily news paper the Respondent bank came to know about the incident. He further contended that in the judgement the court has made adverse remarks against the Police. With the observation that the Police failed to bring the proper witnesses and the Petitioner has managed the witnesses to speak against him and case was ended in acquittal with benefit of doubt and basing on the observation of the court the Respondent bank issued memo calling for explanation, to the Petitioner as to why disciplinary action should not be initiated against him. Since the explanation given by the Petitioner was not satisfactory, the Respondent bank has issued the charge sheet dated 5.8.2008 to the Petitioner as the Petitioner has committed gross misconduct under Para 5(j) of Memorandum of Settlement of Disciplinary Action Procedure for Award Staff dated 10.4.2002 and the Disciplinary Authority has appointed Mr. Nagaraj, the Senior Manager of the bank as the Enquiry Officer and Mr. Ch. V.S.N. Murthy, Branch

Manager, Samalkot Branch as the Presenting Officer. During the enquiry proceeding, the Petitioner has participated in the enquiry and he was assisted by the defence representative. The Petitioner was given ample opportunity to verify the documents and to cross examine the witnesses of the management in the enquiry. The enquiry conducted against the Petitioner was fair and reasonable and all opportunities were given to the Petitioner for making his submissions. In the enquiry the Petitioner was found guilty of the charges. He also contended that the domestic enquiry conducted by the Department has been held legal and valid by this Tribunal. It is further contended that as because the Petitioner has been acquitted in the criminal proceedings when he had been involved in a heinous crime, the bank should not take any lenient view. It is further contended that in a case where the enquiry has been held independently, all the criminal proceedings, acquittal in a criminal case at criminal court is of no help. Even if a person stood acquitted by a criminal court, the domestic enquiry can be held, legal and valid the reason being that the standard of proof required in a domestic enquiry, and that in a criminal case are altogether different. In a criminal case standard of proof is required beyond reasonable doubt while in a domestic enquiry, it is the principles of preponderance of probabilities that constituted the test to be applied. In support of his contention he relied on a decision of the Apex Court reported in Divisional Controller, Karnataka Road Transport Corporation Vs. M.G. Vittal (2012) 1 SCC 442. He further contended that the Petitioner being an employee of a bank a public institution has been involved in a fake note racket along with others, some accessories required for preparation of fake notes had been seized from the possession of the Petitioner. Even though he has been acquitted by the criminal court he should not be reinstated into service to join in a bank, where public have got maximum confidence. When public loose confidence from an employee of the bank he should not be reinstated into service. In a case of loss of confidence order of reinstatement cannot be directed. Lastly, he submitted for dismissal of the claim of the Petitioner.

9. On consideration of the rival contentions of both sides, it is noticed that in fact, the Petitioner being an employee of the Respondent bank had been arrested by the Police for his involvement in fake note racket. The above news item has been published in the daily news paper along with the photograph of the Petitioner. The Petitioner has been remanded to joint custody and faced the criminal trial. In the sessions case, the court acquitted him under benefit of doubt with the observation that, the prosecution failed to prove the charges and the Police failed to produce the proper witnesses and the accused persons managed the witnesses to stop their mouth. But in the Departmental proceeding even though the Petitioner has fully participated and defended the proceeding, the charges levelled against him were proved. The Petitioner did not feel it proper to challenge the domestic enquiry before this Tribunal and it was held legal and valid. The domestic enquiry has been conducted following the principles of natural justice. It is the settled principles of Law that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in a criminal case is of no help, the Law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry, and that in a criminal case are altogether different. In a criminal case standard of proof is required beyond reasonable doubt while in a domestic enquiry, it is the principles of preponderance of probabilities that constituted the test to be applied. In the case of the Petitioner he has been acquitted under benefit of doubt with the remark that he has managed the witnesses not to speak against him. But in the domestic enquiry the charges levelled against the Petitioner has been proved but as because the Petitioner was acquitted in the criminal case he cannot get the benefit of the departmental proceedings. In fact when the Petitioner being a responsible employee of a bank has involved himself in a fake note racket and on the said allegation he was arrested along with others. and the same has been published in a daily news paper, the public has lost confidence on the employee. The Respondent bank being the employer cannot trust upon such an irresponsible employee. Once the employer has lost confidence in the employee and the bonafide of loss of confidence is confirmed. No employer shall trust such an employee to engage him in any responsible duty. In the circumstances, stated above, when the Petitioner was involved in a heinous crime like fake note racket case he should not be allowed to join in his duty and as such the order of punishment of dismissal passed by the Respondent bank needs no interference as the Respondent bank has rightly passed the order.

Thus, Point No. I is answered accordingly.

10. **Point No.II**: In view of the findings given in Point No.I, the Petitioner is not entitled to get any relief.

Thus, Point No.II is answered accordingly.

ORDER

In view of the findings made in Point Nos. I and II, the case of the Petitioner Sri B. Venkateswara Rao, is dismissed. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 25th day of February, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ सं. 17/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल–12011/37/2010–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 23rd April, 2019

S.O. 646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Hyderabad as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 23.04.2019.

[No. L-12011/37/2010-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of March, 2019

INDUSTRIAL DISPUTE No.17/2011

Between :

The President,
Allahabad Bank Employees Union,
Shalimar Apartments, Yousufguda,
Hyderabad – 500 038. …Petitioner

AND

The Zonal Manager,
Allahabad Bank, Zonal Office,
3-6-435, I & II Floors, Main Road,
Himayathnagar, Hyderabad – 500 029. …Respondent

Appearances:

For the Petitioner : M/s. Kadari Rama Reddy & Y. Ranjith Reddy, Advocates

For the Respondent : Sri K. Lakshminarayana, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 12011/37/2010-IR(B.II) dated 4.5.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Management of Allahabad bank Hyderabad imposing the punishment by bringing down the present basic pay of Shri S.K.Y.L.N. Swamy to a lower stage in scale of pay by one stage is justified? What relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 17/2011 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The workman Sri S.K.Y.L.N. Swamy joined the service of the Respondent's bank as clerk cum cashier at Chandrapur (Maharashtra) on 3.1.1983. He was transferred to Hyderabad on 24.1.1992. Later on he became eligible to and was promoted as Special Assistant, which post carries a special allowance in terms of Industry level bilateral settlement. The workman joined as special assistant in Hyderabad main branch on 5.2.1996 and was transferred to Machilipatnam branch on 20.5.1998 and was working there. While he was working at Machilipatnam branch, one charge sheet bearing No.ZOH/PER/VIG/CS/ AGM&DA/SKYLN/235 dated 15th May, 2008 was issued to him alleging that he "intervened and shouted at" a customer; that "he continued to shouting" at an officer "using unparliamentary language"; that when the Branch Manager intervened, he "used abusive language against him and raised his hand to assault him"; that he "committed nuisance in the branch" by his "unruly behaviour". The above said allegations against the workman were said to constitute misconduct in terms of clauses 5(c), 5(q) and 5(e) of Memorandum of Settlement on Disciplinary Action and Procedure there for, dated 10.4.2002, along with show cause notice dated 13th March, 2008 to the same effect. The workman submitted his reply to the show cause notice dated 13.3.2008 and charge sheet dated 15.5.2008, interalia seeking certain documents to enable him to submit a comprehensive explanation and denying the allegations made against him. But the Respondent bank without providing the documents conducted one domestic enquiry into the alleged misconduct and one domestic enquiry was held on 15.1.2009, 31.1.2009, 23.3.2009 and 24.3.2009. After completion of the enquiry the Enquiry Officer gave a finding to the effect that all the allegations against the workman in the charge sheet was "proved conclusively". Thereafter the Disciplinary Authority issued second show cause notice enclosing there on a copy of the findings of the Enquiry Officer dated 26.5.2009. In the second show cause notice the Disciplinary Authority stated that the workman "accepted" the "report" of the Enquiry Officer and also thereafter he "proposed to impose the penalty as per clause 6 (e) of Memorandum of Settlement on disciplinary Action and Procedure therefor dated 10.4.2002 that the present basic pay be brought down to a lower stage in the scale of pay by one stage." In the above said order the Disciplinary Authority offered a personal hearing to the workman and his defence representative to make any submissions against the punishment proposed. The workman along with his defence representative made detailed submission by filing show cause against the proposed punishment at the persona hearing held on 8.7.2009 by order No. No.ZOH/PER/ CAS/SKYLN/662 dated 22.7.2009. The Disciplinary Authority passed the final order confirming the punishment proposed in the second show cause notice dated 24.6.2009, "with immediate effect". The workman preferred an appeal on 4.9.2009 to the Appellate Authority against the punishment imposed on him. The Appellate Authority by order No.ZOH/PER/CS/SKYLN/AA/02 dated 29.10.2009, rejected the appeal. Thereafter the Petitioner union raised an industrial dispute on 30.12.2009 before the Assistant Labour Commissioner(Central), Vijayawada seeking redressal with a prayer to set aside the punishment imposed on the workman. The conciliation officer initiated one conciliation proceeding, but subsequently, the conciliation proceeding was failed, resulting in the above reference. It is stated that no evidence was led on clause 5(c) viz., that the workman was drunken, or was riotous or disorderly or of indecent behaviour. Similarly, it was not shown as to what was the "misbehaviour towards the customer arising out of bank's business." There was neither a grievance by any customer nor was any customer examined at the enquiry to the alleged misconduct on the part of the workman. Clause 5 (e) speaks of "wilful insubordination or disobedience" of "any lawful and reasonable order." No evidence was led on this aspect of the alleged misconduct. Therefore, the Petitioner's union submitted that the domestic enquiry conducted by the Enquiry Officer is not proper, the Enquiry Officer ignored the statement of one of the signatories i.e., MW2 who signed on the same as a witness which eliminates him from being a complainant. The Petitioner union also submits that the domestic enquiry, the findings of the Enquiry Officer as well as of the Disciplinary Authority were all not correct. The punishment imposed on the Petitioner workman is also not proper. With the above averments, the Petitioner union prayed this Tribunal to consider the facts brought out by the Petitioner union and to answer the reference in favour of the workman and to set aside the punishment imposed on him holding the same as illegal and unjustified and to direct the Respondent Management to restore him at the stage it was reduced with all attendant and consequential benefits.

3. **Respondent filed counter with the averments in brief as follows**: The Respondent Management appeared and filed counter denying the facts averred in the claim statement. While admitting some of the facts, the Respondent Management also denied and some facts in toto challenged the maintainability of the reference. The Respondent Management has stated that the enquiry was conducted following the principles of natural justice. The Petitioner was given full opportunity to defend himself adducing his own evidence, producing his own documents in his defence, he examined himself, cross examined the witnesses of the Management and also to represent over the findings of the Enquiry Officer as well as the proposed penalty. The enquiry conducted by the Management is legal and valid and it

needs no interference. It is stated that the Respondent bank being a public sector bank dealing with a large number of customers every day and the customers of the bank being the only source of survival for the banking industry, the staff members are expected to deal with the customers most politely and courteously. Let alone not showing the above virtues, the Petitioner behaved in a most discourteous, impolite and disorderly manner and such a behaviour on his part is fraught with the risk of customers running away from the bank to other more congenial banks which are many in the competitive market. Besides, the Petitioner's behaviour towards his superiors including the Branch Manager reflected his disrespect to his superiors and utter lack of respect to the disciplinary rules and code of conduct by which he is bound and governed. It is further stated that if this kind of misconduct is not taken cognizance of and adequately punished, the Petitioner can, not only continue to indulge in such a misconduct but even step up his misconduct which will, not only demoralize the other staff members but also scare the customers to run away from such environment, closing all their accounts. The Respondent bank has submitted all the documents before this Tribunal as per the request of the Petitioner's union. With these averments, the Respondent Management submitted that the claim of the Petitioner be dismissed with heavy costs.

4. As per the submissions made by both the parties, the following points are to be determined:

1. Whether the action of the Management of Allahabad bank Hyderabad imposing the punishment by bringing down the present basic pay of Shri S.K.Y.L.N. Swamy to a lower stage in scale of pay by one stage is justified?

II. What relief the workman is entitled to?"

5. In this case the domestic enquiry conducted by the Respondent Management is held as legal and valid vide order dated 15.9.2017.

6. I have already heard the Learned Counsels for both the sides in the matter.

7. **Point No. I** : The Learned Counsel appearing on behalf of the Petitioner submitted that the workman Sri S.K.Y.L.N. Swamy joined the service of the Respondent bank as a Clerk cum Cashier at Chandrapur (Maharashtra) on 3.1.1983. Later he was promoted as Special Assistant and while he was working as such at Machilipatnam branch, one charge sheet dated 15th May, 2008 was issued to him alleging that he "intervened and shouted at" a customer; that "he continued to shouting" at an officer "using unparliamentary language"; that when the Branch Manager intervened, he "used abusive language against him and raised his hand to assault him"; that he "committed nuisance in the branch" by his "unruly behaviour". The above said allegations against the workman were said to constitute misconduct in terms of clauses 5(c), 5(q) and 5(e) of Memorandum of Settlement on Disciplinary Action and Procedure there for, dated 10.4.2002, thus the above charge sheet along with show cause notice dated 13th March, 2008 to that effect was served on the Petitioner. The Disciplinary Authority proceeded with one domestic enquiry. The Enquiry Officer conducted the enquiry and gave a finding that all the allegations against the workman in the charge sheet was "proved conclusively". The copy of the enquiry proceeding was forwarded to the workman along with show cause notice. The Petitioner union submitted reply to that show cause notice. He further contended that the enquiry was not conducted properly. The findings of the Enquiry Officer is based on the version of the prosecution witness only which is against the principles of natural justice. No opportunity has been given to the Petitioner to defend his case properly. The enquiry has not been conducted following the principles of natural justice. The punishment imposed on the Petitioner is disproportionate. The action of the Respondent Management is arbitrary. It is submitted to set aside the order of the Disciplinary Authority.

8. On the other hand, the Learned Counsel for the Respondent submitted that while the workman was working as Special Assistant at Machilipatnam Branch of the Respondent bank on 24.1.2008 when a customer approached the branch and was enquiring about the clearance of a cheque which had been deposited to a staff member of the bank, the workman intervened and shouted at the customer. When a superior to the workman advised him to calm down and attend to his work, the workman shouted at the officer using unparliamentary language. When the Branch Manager attempted to pacify the workman, the workman used abusive language at the Branch Manager, and even raised his hand to assault him in presence of other staff members and customers. Therefore, the workman was chargesheeted for committing gross misconduct under the disciplinary rules of the bank. A Departmental enquiry was initiated and show cause notice was issued to the workman directing him to file reply. The workman submitted his reply but as the reply of the workman was not found satisfactory, enquiry was conducted. The Petitioner workman participated in the enquiry along with his defence representative. The workman defended himself against the charges. The Enquiry Officer submitted his report giving detailed reasoning in his findings. The enquiry was conducted following the principles of natural justice. The Petitioner was given full opportunity to defend himself adducing his own evidence, and producing his own documents. After conclusion of the enquiry the charges were proved and the Enquiry Officer also submitted his report with proposed punishment. The Disciplinary Authority imposed punishment. Even though the workman preferred an appeal before the Appellate Authority, his appeal was rejected. Ultimately, the workman was imposed with the punishment. He further contended that considering the findings of the Enquiry Officer the Respondent bank has rightly imposed the punishment and it needs no interference. The claim statement filed by the Petitioner union be dismissed with costs.

9. On consideration of the rival contention of both the sides and on perusal of the documents relied on by the parties it is noticed that the Petitioner was chargesheeted for committing gross misconduct under the Disciplinary Rules of the Respondent bank. Further, there was allegation of misbehaviour with the customers of the bank, with the staff members, as well as with the Branch Manager of the Respondent bank. The Petitioner instead of expressing regret for

his misconduct, rather challenged the show cause notice issued to him. In the domestic enquiry the Petitioner personally participated and cross examined the witnesses of the Management and he is also examined himself. The domestic enquiry was conducted properly following the principles of natural justice. In the enquiry the charges have been proved. The allegation of the workman that basing on the evidence of the prosecution, the Enquiry Officer has submitted his report which is based on pre-ponderance of probabilities. In fact, the allegation has been made against a disciplined employee of a bank which is a public sector bank, the employee working in the bank are dealing with large number of customers every day and the customers of the bank being the source of survival of the bank they should be treated politely. The staff members are expected to deal with the customers politely and courteously and they should be very disciplined. If any indecent behaviour will be shown to the customers, by any of the employee of the bank, obviously the customers would not attend the bank and the Branch would be collapsed. The existence of the bank is purely based on good will. The conduct and good behaviour of the employees of the bank should be very courteous. When there is allegation of misbehaviour with the customers, staffs and the Branch Manager against the workman, the workman should regret himself, but instead of regretting himself he (the workman) has defended tooth and nail. During the enquiry, the workman has also pleaded his guilty. But the workman instead of pleading his guilty during the course of enquiry proceeding should plead his guilty before the customers as well as the staffs and the superior officers of the bank. But the workman has not done so. In the instant case the Disciplinary Authority has taken a lenient view and only imposed the penalty of bringing down his present basic pay to a lower stage in the scale of pay by one stage as allegation of misbehaviour is made against the workman during the working hours. Thus, the punishment imposed on him is justified and it needs no interference.

Thus, Point No. I is answered accordingly.

10. **Point No. II** : In view of the findings made in Point No.I, the workman is not entitled to get any relief as prayed for. Hence order.

Thus, Point No.II is answered accordingly.

Result :

The reference is answered as under:

The action of the Management of Allahabad bank Hyderabad imposing the punishment by bringing down the present basic pay of Shri S.K.Y.L.N. Swamy to a lower stage in scale of pay by one stage is justified. As such, the workman is entitled to any relief as prayed for. The reference is answered in negative.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 22nd day of March, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 23 अप्रैल, 2019

का.आ. 647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ सं. 68/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.04.2019 को प्राप्त हुआ था।

[सं. एल–12012/130/2006–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 23rd April, 2019

S.O. 647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2007) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bangalore as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 23.04.2019.

[No. L-12012/130/2006-IR (B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

BANGALORE

DATED : 08TH APRIL 2019

PRESENT : Justice Smt. Rathnakala Presiding Officer

C.R No. 68/2007

I Party
Smt. P.N. Vijaya,
W/O Shri Y. Vijaya Kumar,
No.546,22nd 'A' cross
Banashakari-II Stage,
BANGALORE - 560070

II Party
The Dy. General Manager,
Indian Bank,
Bangalore Zonal Office, Raheja Towers,
M.G Road,
Bangalore - 560001

Advocate for I Party :
Sri.V.S.Naik

Advocate for II Party:
Sri. Ramesh Upadhyaya

AWARD

The Central Government vide Order No.L-12012/130/2006-IR(B-II) dated 07/06/2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Indian Bank in imposition of punishment of dismissal from the services on Smt.P.N.Vijaya, Ex-Clerk/Shroff w.e.f 30.7.2003 is legal and justified? If not, to what relief the workman is entitled and from which date?"

1. As per the case set forth by the 1st Party she was appointed on 19.07.1985 in the 2nd Party Bank as Typist/ Clerk, she was dismissed from service by the order of the 2nd Party w.e.f 30.07.2003 while she was working at Banashankari 2nd Stage Branch. On 03.02.1996 she was suspended pending Domestic Enquiry, on certain allegations. On the same charges, Criminal Complaint was lodged and Criminal prosecution was launched. However, Criminal case ended on 03.06.2003 with her acquittal. The Departmental Enquiry was concluded by the Enquiry Officer holding that out of the 25 charges framed against the 1st Party workman most of the charges are proved beyond any reasonable doubt and part of them are not proved (details discussed in the report), The 1st Party submitted her reply to the Enquiry Report.

2. The Disciplinary Authority issued Show Cause Notice proposing the Punishment of Dismissal for which also she submitted her reply to take sympathetic view. However, the Disciplinary Authority proceeded to pass the punishment already proposed vide order dated 03.07.2003. She took the matter before the Appellate Authority of the Bank, though opportunity was given to her for personal hearing she did not participate. However, after considering her written submission the Appellate Authority confirmed the order of punishment.

3. On the rival pleadings of the parties 'Preliminary Issue' regarding the fairness of the Domestic Enquiry was framed and held that the Domestic Enquiry as fair and proper.

4. Thereafter, the 1st Party gave her evidence by way of affidavit regarding her unemployment.

The 2nd Party in their written submission have reiterated the charge sheet allegation for which she was found guilty and justified their action by stating that, charges was serious in nature. She was afforded all reasonable and fair opportunity during Departmental proceedings till it's conclusion; she failed to prove her role in misappropriation of the money in the Bank. Hence, the punishment order is imposed.

5. The 1st Party in her written submission has contended that, since the charges in the Criminal Case and the Domestic Enquiry were identical and she is acquitted from the Criminal Case, the dismissal order despite acquittal is unsustainable. The then Branch Manager Mr. Amruthalingam, had admitted before the Criminal Court that, most of the alleged irregularities were with his prior approval and there was sanction for the said transactions. The witness/Mr. Krishnaiah admitted that Mr. Amruthalingam was punished by the Bank. None of the vouchers were examined with regard to entries found in the registers and other records. Handwriting expert's opinion was not taken to find out the truth of the imputations to prove the charges levelled against her. Hence, the finding of the Enquiry Officer is perverse and the punishment order passed is without proper application of mind. She has put in 18 years of unblemished service with the Bank, now is unemployed, the penalty of dismissal is shockingly disproportionate.

6. Perused the evidence, both oral and documentary brought to the table of the Enquiry Officer and also the finding of the Enquiry.

7. Based on the inspection report of January 1996, the Manager of the Branch kept the 1st Party workman under suspension, lodged complaint to the Jurisdiction of Police and Departmental Enquiry was initiated, she was issued charge sheet with the following allegations :-

(1) ON 19.09.1992 you have debited deposit loan and credited your SB 817 for Rs.10,000.00 through a contra voucher. The deposit loan is not opened in the ledger; however, the vouchers are included in the day's transaction. In the deposit loan balance book, the balance as on 30.09.1992 Rs 10,000.00 is shown as last entry and thus balance book is adjusted fictitiously.

(2) ON 10.10.1992 you have debited deposit loan and credited your SB 1313 by Rs 8000.00 but the loan account was not opened in the ledger. The vouchers are included in the day's transaction. In the deposit loan balance book the balance as on 30.10.1992 is adjusted by excess totalling in page 2 to the tune of Rs. 18000.00(inclusive of item 1 above).

(3) ON 02.11.1992 you have made a fictitious credit entry in your deposit loan account 153/DL by Rs. 40,000.00, as if it is transferred from SB a/c reducing liabilities deliberately. There is no entry in GL. The difference at this stage is Rs. 58000.00 (1,2,&3).

(4) ON 03.11.1992 you have debited deposit loan and credited your SB account 1313 by Rs.3000.00 but the loan account is not opened in the ledger. The vouchers are included in the day's transaction and the difference at this stage increased to Rs.61000.00

(5) ON 21.11.1992 you have debited deposit loan and credited your SB 222 by Rs. 5000.00 but the loan account was not opened in the ledger. The voucher are included in the day's transactions, and the total difference at this stage is Rs. 66000.00.

The Deposit Loan Balance as on 31.12.1992 is adjusted by including a fictitious entry of Rs. 66,000.00 by you, in the last page of the balance book.

(6) ON 27.01.1993 you have debited deposit loan and credited your SB 1313 by Rs. 13500.00 but the loan account /not opened/ was in the ledger. The voucher are included in the day's transaction and the difference at this stage was Rs. 79500.00.

(7) ON 13.03.1993 you have debited Deposit Loan and credited to BPO account favouring M/s R. A. Devi Memorial Trust by Rs. 10,000.00 (BPO NO. 923646). The loan account is not opened in the ledger. The BPO is paid in clearing on 16.03.1993.

The deposit loan balance as on 31.03.1993 and 30.06.1993 are adjusted by opening a dummy account for Rs.89500.00 in folio 210 in the ledger with CIS NO. 0041/93/1/54.

(8) ON 16.08.1993 you have debited deposit loan and credited OD account 1031 by Rs. 30130.00 but the loan account not opened in the ledger and are included in the day's transaction and the difference at this point was Rs.1,19,630.00.

ON the same day i.e. on 16.08.1993 12 Supply Bills were purchased for M/s Timek, a customer, aggregating to Rs.1,01,218.00. Contra vouchers debiting SBP and crediting OCC was prepared by you. Subsequently you have removed credit voucher for OCC and in Debit SBP voucher included Rs.16312.00 – thus total debit to SBP is Rs. 117530.00 (Rs. 15912.00 being SBP of M/s A C M bill Nos 15, 17 & 24 already realized on 28.07.1993 and M/s Durga Devi Industries already realized on 13.09.1993 – i.e. pending in SBP balance book) – you have prepared a credit voucher for deposit loan (showing offset as MTL as though it is a rectification voucher) for Rs. 1,17,530.00. The Voucher is not authenticated by any of the Officers but included in the days transaction.

On 16.08.1993 some of the SBP bills pertaining to M/s Durga Devi Industrial are reversed to the debit of party and in this debit Rs. 400.00 again included by you and thus SBP difference is reduced.

At this stage the position of difference is as under

a. The deposit loan ledger is short by Rs.2100 to GL

b. SBP Rs.15912.00 and

c. Due to M/s Timek Rs. 1,01,218.00 + Rs. 400.00 to M/s Durga devi Industries.

These differences are further manipulated by you as under.

(9) ON 25.08.1993 M/s D Tech Machines OCC account was debited by Rs. 5000.00 to the credit of their MTL account, and contra vouchers are prepared for this purpose.

Subsequently on 30.08.1993 in MTL ledger you have alerted Rs. 5000.00 as Rs 3000.00 and prepared for rectification voucher for Rs. 2000.00 debiting MTL and crediting Deposit Loan.

(10) ON 01.03.1994 an extraneous entry of Rs. 15912.00 was inserted by you, without any voucher , in Depositors Interest on RIP in expenditure Sectional Day Book and total expenditure is taken as Rs. 36,837.14 where was the real figure should have been RS. 20,925.14. You have prepared a credit voucher for SBP for Rs. 15912.00 and included in the day's transactions. This SBP credit voucher is not signed by any of the officers.

(11) ON 21.07.1994 you have prepared contra vouchers debiting OD 1031 and crediting SB 222 for Rs. 60,000.00. The debit voucher is not posted in ledger but taken to day book and GL. Weekly balances of OD ledger from 21.07.1994 to 29.08.1994 were adjusted by manipulating figures by you in OD balance book.

On 29.08.1994 in day book debit side Deposit Loan figure is altered by you from Rs. 13,500.00 to Rs. 73,500.00 and in the credit side of day book on the transfer column of OD Rs. 60,000.00 increased. Thus the difference of Rs. 60,000.00 in OD ledger is shifted to Deposit Loans, as referred above.

On 06.09.1994 you have altered the expenditure column in Sectional Day Book from Rs. 3,623.40 to Rs. 13,623.40 by altering figure of Rs.3,573.40 to Rs. 13,573.40 in Depositors Interests on RIP. To Offset this difference of Rs. 10,000.00 you have inserted Rs.10,000.00 in transfer column of day book against Deposit Loans. Thus Difference of Rs. 60,000.00 in Deposit Loans was reduced to Rs. 50,000.00.

(12) ON Following Dates while closing the deposit loans interest on loans and advances (deposit loans) were not vouched ; thus deposit loan balance was fictitiously got adjusted to the extent as such income leakage is observed.

08.02.1995	H.Dattu Rao 71/DL	Rs. 407.00
11.02.1195	G K Nagaraj Shetty 74/DL	993.00
30.01.1995	M.S Ganesh 76/DL	3590.00
		4990.00

With this adjustment the difference in Deposit loan was reduced to Rs. 45,010.00.

(13) ON 20.03.1995 to balance the deposit loan ledger you had opened a fictitious deposit loan for Rs. 45,000.00 in the name of P.N. Suresh (a third party who had earlier availed loan and closed) under CIS NO. 0052/95/1/35 in the folio 95/DL. The account is closed on 10.04.1995 without vouchers ; charging interest of Rs. 155.00 without vouchers.

On 08.06.1995 you have actually entered Rs. 45,000.00 in debit side of FDR in Day Book and in credit side the same amount is entered against Deposit loans. This resulted in shifting the difference of Rs. 45,000.000 from Deposit Loans to FDR. While an Officer Adjusting the FDR ledger during the month end apprehending that the fraud may come to light, you have just scored Rs. 45,000.00 entry against FDR as on 08.06.1995 in Day Book and simply entered Rs. 35,000.00 against RIP debit. To get RIP ledger adjusted you have just put balance nil against a balance of Rs. 35,000.00 in the account of Smt. Jalajakshamma, which is genuine deposit. This resulted in a difference of Rs. 10,000.00 in GL/Weekly.

In between 10.04.1995 and 08.06.1995 the deposit loan balance book is adjusted by manipulating figures in the balance book.

On 09.06.1995 Expenditure is manipulated by you by way of altering

DITD from Rs. 12,989.66 to Rs. 22,989.66 and total expenditure from Rs. 13,314.36 tp Rs. 23,314.36. This difference of Rs. 10,000.00 nullified the difference in GL/Weekly said above.

On 08.07.1995 the total expenditure was Rs. 1,365.50. Balance in GL was also arrived correctly. Subsequently you have added 1 to 1365.50 as prefix and the figure is altered as 11,365.50. As such a difference of Rs. 10,000.00 is purported to have been occurred , making a provision for yourself for future transaction.

On 11.07.1995 the total expenditure is only Rs. 4,887.50. Where as this is posted as Rs. 14,887.50. While arriving the balance this difference of Rs. 10,000.00 along with the difference already provided on 08.07.1995 as above, by you, aggregating to Rs. 20,000.00 is inflated in the expenditure. Correspondingly you have inflated the balance in RIP is reduced to Rs. 15,000.00 from Rs. 35,000.00(manipulated on 08.06.1995).

On 02.08.1995 the total expenditure was Rs. 27,830.72 . It was correctly in GL by you and the balance was arrived correctly. This is evident from the weekly taken on 04.08.1995 where in total current expenditure was correctly taken as Rs. 11,19,639.06. Subsequently on 04.08.1995 you have altered the debit figure of 02.08.1995 from 27,830.72 to 37,830.72 and the balance is altered as Rs. 11,29,639.06. This difference of Rs. 10,000.00 was manipulated in RIP on 07.08.1995 by inflating the RIP figure in GL.

This resulted in reducing the difference in RIP to Rs. 5,000.00.

On 14.08.1995 the total expenditure of the branch was Rs. 12,825.66 as per day book. Whereas you have posted it in GL as Rs. 17,825.66 ; thus resulting in difference of Rs. 5,000.00 which was again manipulated in arriving a wrong balance in RIP on the same day. This has nullified the difference in RIP. In a nut shell the difference in RIP is wiped of as under.

Rs. 35,000.00 on 08.06.1995	Rs. 10,000.00	08.07.1995
	Rs.10,000.00	11.07.1995
	Rs.10,000.00	02.08.1995
	Rs. 5,000.00	14.08.1995

(14) **ON 23.08.1995** Total Expenditure in Sectional Day Book and Day Book was Rs. 92,033.35 ; however while posting GL you have posted it as Rs. 97,033.35, thus there is a difference of Rs. 5,000.00 in GL. On 25.08.1995 being a Weekly Day o f the balance figure in FDR is taken as 159,38,205.07 instead of Rs. 159,33,205.07 and adjusted the weekly. Subsequently on 30.08.1995 you have manipulated to alter the FDR/STD sectional day book by adding Rs. 5,000.00 entry under Short Term Deposits and opened a Short Term Deposit for Rs. 5,000.00 under receipt No. 201660 mentioning interest to run from 26.08.1995. The same has been entered in Short Terms Deposits Ledger folio 78/11. The deposit was closed on 13.10.1995 and credited to your SB account No. 2100 with an interest of Rs. 63.00. Vouchers (in respect of above transaction) of 26.08.1995 are not available.

(15) **ON 09.09.1995** you have altered the figures Depositors Interest on Term Deposits from Rs. 64,651.00 to Rs. 84651.00 in expenditure sectional day book; thus the total expenditure on that day has become Rs. 85,032.00 instead of Rs. 65,032.00. This alteration resulted in Rs. 20,000.00 difference in GL. As such you have made a formal provision in expenditure for future transaction / requirement.

(16) **ON 12.09.1995**, you have altered the expenditure head under depositors interest on RIP from Rs. 668.20 to 20,668.20 resulting in inflating expenditure by Rs. 20,000.00. This amount has been credited to OD along with Rs. 20,000.00 which was manipulated on 09.09.1995 as above in expenditure, totaling to Rs.40,000.00. The voucher is credit voucher offset being your SB 817. Where as the debit voucher is not taken in to transaction (i.e., SB 817 is not debited and the voucher was removed by you), by making manipulations in Day Book and GL.

(17) **ON 16.09.1995** while arriving the balance in Expenditure in GL you have inflated Rs. 50,000.00 by writing the balance of Rs. 16,81,160.40 instead of Rs. 16,31,160.40. This difference od Rs. 50,000.00 in Sub-GL of Income & Expenditure has been manipulated on 14.09.1995 by altering interest amount of Rs. 7,506.20 as Rs. 57,506.20 and this Rs. 50,000.00 was provided by you for your future transaction.

On 19.09.1995 you have prepared a contra voucher for Rs. 75,880.50 by mentioning local BP of which a credit voucher of Rs. 50,000.00 towards your OD account 1031 is prepared and remaining Rs. 25,880.50 are towards 7 other parties. You have altered Debit Local BP voucher from Rs. 75,880.50 to Rs. 25,880.50. Thus Rs. 50,000.00 which is credited to your OD a/c 1031 would offset the expenditure manipulation already done by you on 16.09.1995.

The subject cheque was neither registered in Local BP nor sent in clearing.

(18) **ON 18.09.1995** the total expenditure in Sectional Day Book amounting to Rs. 37,231.61 is posted as 67,231.61 in GL resulting in a difference of Rs. 30,000.00. After posting and while arriving the balance again a manipulation is committed by you as the balance would have been Rs. 17,48,392.01 instead you have arrived the balance as Rs. 17,68,392.01 thus resulting in a difference of Rs. 50,000.00 (Rs.30,000.00 + 20,000.00).

On 21.09.1995 you have prepared a credit voucher for Rs. 50,000.00 in favor of OD 1031 showing offset as Local BP. Actually there is debit to Local BP to the extent of Rs. 44,960.50 which is genuine transaction favoring 2 customers, thus this Rs.50,000.00 Local BP is not accounted for. However, as you had already provided Rs. 50,000.00 on 18.09.1995 as said above this debit of Rs. 50,000.00 towards Local BP is manipulated towards it.

(19) **ON 14.11.1995** Total Expenditure as per Sectional Day Book and Day Book is Rs. 1,153.00. You have posted this as Rs. 21,153.00 in GL. The difference of Rs. 20,000.00 is adjusted by you by altering the Short Term Deposit Figure on the same day, by making a fictitious entry in Day Book (altering Rs. 6,000.00 as Rs. 26,000.00) but without any supporting vouchers. You have also written a Receipt 201758 for Rs. 20,000.00 mentioning due date as 30.12.1995. This short term deposit was closed on 02.01.1996 by giving an interest of Rs.328 and credited to your SB a/c 1313.

(20) **ON 21.11.1995** the total Expenditure Figure of Rs. 4,361.35 Is altered in GL as RS. 9,361.35 due to which the difference of Rs. 5000.00 occurred.

(21) **ON 22.11.1995** the total expenditure is Rs. 8,300.35 where as you have posted in GL as Rs. 13,300.35 resulting in a difference of Rs.5,000.00.

(22) **ON 24.11.1995** the total expenditure is Rs.2,022.26 where as you have posted in GL as Rs. 7,022.26 resulting in a difference of Rs. 5,000.00.

The total difference as per the above three (20,21,& 22) transactions Rs. 15,000.00 is credited to your SB A/C 1313 by means of a credit voucher (without any debit) on 21.11.1995 itself. This Rs. 15,000.00 entry appears in Sectional Day Book on 22.11.1995 by altering Rs. 5,000.00 as Rs. 15,000.00; however this Rs. 5,000.00 itself is a fictitious entry. The voucher is prepared to the debit of your OD a/c 1031; however this debit does not find a place in OD as on 22.11.1995 which confirms that the voucher is fictitious.

The credit entry in SB 1313 is done in your hand officer's initials in forged.

(23) **Loan On Deposit dated 04.08.1993 :-** On 04.08.1993 you had availed a Deposit loan folio 224/DL against the security of the following Deposits.

RIP	054657	FOR	RS.	25,000.00
RIP	054658	FOR	RS.	25,000.00
RIP	054659	FOR	RS.	25,000.00
RIP	054660	FOR	RS.	20,000.00

The following **serious irregularities are observed** in the transaction.

i) On .3.08.1993 i.e., a day earlier to the above loan you had withdrawn Rs. 100,000.00 cash from your OD account 1031 and the balance in the OD account went up to **Rs. 2,96,898.00 against a limit of Rs. 1.60 lacs** by availing huge excesses in the account.

ii) All the receipts mentioned above were already pledged to your OD/Facility Deposit a/c 1031 and **thus the entire deposit loan of Rs. 100,000.00 is a doubt finance and accommodation, for the reasons not known.**

iii) This deposit loan is closed on 09.12.1993 **by debiting & availing excess in OD. The OD balance as on 09.12.1992 was Rs. 2,66,760.35 against a limit of Rs.1.60. lacs**

(24) **OVER DRAFT ACCOUNT :-**

You have availed OD facility against the following deposit receipts.

Dep. No.	Date	Amount	Due on
395532	20.3.92	Rs. 25000	20.3.98
395533	''	25000	"
395534	"	25000	"
395535	"	10000	"
054657	9.4.92	25000	9.4.95
054658	"	25000	"
054659	"	25000	"
054660	"	20000	"
		180000	

The various irregularities/ manipulations are found in the conduct of OD account and are listed here below.

a) The ledger folio relating to the period 31.12.92 to 22.6.93 is tampered by you deliberatel to camouflage certain fraudulent transactions.

It is found that the closing balance is debit Rs. 2,38,650.80 where as it is carried forward, by you, in the next folio as debit Rs. 1,38,650.80. This entry is also not authenticated by any of the officers. The next transaction is on 30.6.93 which is a debit of Rs. 8047.20 being the interest.

b) Because of the said manipulation, while balancing the OD on 25.6.93, which happens to be a Friday and have entered Rs. 2,38,650.80 in the balance book; and got adjusted the book.

c) To adjust the OD balance as on 30.6.93 you have vouched the total interest on OD as Rs. 1,56,564.40 instead of Rs. 2,56,564.40.

By this manipulation the difference of **Rs. 1,00,000 in OD** was siphoned by you.

d) You have altered the limit of Rs. 1.60 lacs to Rs. 2.00 lacs in OD ledger for the period 31.12.92 to 22.06.93. Subsequently in the next folio also initially you had carried over the limit as Rs. 2.00 lacs (both on front and back side of folio) for the period 22.6.93 to 1.2.94. Further it is seen that this limit of Rs. 2,00,000.00 is made as Rs. 2,60,000.00 by altering the second digit "0" as "6" and the same altered limit of Rs. 2.60 lacs.

e) ON 30.6.94 interest is short vouched by Rs. 10,000.00. The transactions are as under.

On 13.6.94 there is a debit voucher for Rs. 10,000.00 (voucher prepared for you), but it is not debited to OD account. The Weekly Balances on 17.6.94 and 24.6.94 were got adjusted by taking manipulated figures of your account.

Date	Actual Balance	Balance taken in BK
17.6.94	1,87,448.95	Rs. 1,97,448.95
24.6.94	1,82,698.95	1,92,698.95

Similarly OD balance book on 30.6.94 ; 1.7.94 ; & 8.7.94 was adjusted by manipulating figures.

On 9.7.94 in OD a/c for a debit of Rs.2000.00 you have posted it as Rs. 12,000.00 and

On 15.7.94 you have prepared rectification voucher for interest of Rs. 10,000.00. Thus both the above differences are nullified.

f) Dates of Credits/Debits in the OD account are entered to your advantage in the ledger to avoid interest.

g) On 23.5.92 Rs. 65000.00 transferred from customers current a/c 137 of M/S Agarwal Steels to your SB a/c 1313 through a contra voucher without any authorization.

h) On 22.2.94 there is a debit of Rs. 3000.00 in the OD a/c No. 1035 of Mr. G.N. Munirathnam. While arriving the balance you have arrived wrong balance of Rs. 20,000.00 as balance of Dr Rs. 7,49,931.35 you have arrived it as Debit Rs. 7,69,931.35.

The OD balance book showed a difference of Rs. 20,000.00 on 25.2.94 and 4.3.94. On 8.3.94 you have made an extraneous credit (transfer) entry of Rs. 20,000.00 in your OD account 1031 which reduced your debit balance by Rs. 20,000/- which nullified the difference in the balance book.

(25) As mentioned earlier, in page 1 of this report, you have misappropriated funds by various methods like, raising fictitious loans, altering OD limit, manipulating Expenditure figures, writing fictitious Deposit Receipts, diverting SBP credits from customers accounts to your account, etc. These transactions **involve Interest Factor also** (being not collected /short collected), and incurred a financial loss to the bank to the extent of Rs. 6,19454.80

The above acts of yours if proved amounts to an act prejudicial to the interest of the Bank involving the bank in serious loss, as per Clause 19.5(j) under Bipartite Settlement 1966 amended from time to time.

8. She appeared on the first date of preliminary hearing and admitted about the receipt of charge sheet and requested to wait for the outcome of the investigation in the Criminal Case. However, from there onwards she did not turn up. The Enquiry proceeded Ex-parte thereafter. On every date of hearing notice of enquiry date was communicated to her and she kept on seeking adjournment on each date. By way of letter dated 01.06.2001 apart from requesting stay of proceedings, she had sought permission to engage advocate to defend her case which relief was ruled out by the Enquiry Officer. In the mean time she approached the Hon'ble High Court seeking the relief of availing the service of the advocate in the Department Enquiry, and had sought to stay the Departmental Enquiry till the conclusion of Criminal Case. Since, there was no stay order she was treated ex-parte and the enquiry continued and concluded.

9. The presenting Officer produced as many as 134 copies of the documents that the Management had relied upon, and the proceedings of the Enquiry of each day was sent to the 1st Party since she did not turn up in the Enquiry. The Management examined 3 witnesses; they were all discharged without cross examination. The Enquiry Officer proceeded with his Enquiry Report.

With regard to the first allegation, copies of the 2 contra vouchers were produced. MW-3 the then Branch Manager identified the signatures of the 1st Party on these vouchers. With regard to the first allegation there were contra voucher dated 19.09.1992 prepared by the 1st Party debiting the deposit amount in her own name and crediting the same in her SB Account 817 for Rs. 10,000/-, her handwriting was identified by the witness/the then Branch Manager. The deposit loan ledger did not reflect in the deposit loan balance book, where an extraneous entry of Rs. 10,000/- was noticed as it was the last item without details. While all the entries were made with the details of Folio No. name and the interest charged for 30.09.1992, there was no details pertaining to Rs. 10,000/-. At Folio No. 177 an account was opened on 01.10.1992 in the name of Mrs. Sandhya Hebbar. At SB ledger sheet of Account No. 817 standing in the name of Sh. P. Narasimhalu father of the 1st Party crediting of Rs. 10,000/- was made on 19.09.1992 from the deposit loan.

10. With regard to Charge No. 2, the contra vouchers debiting the deposit loan account and crediting SB Account No. 1313 standing in her name for Rs. 8,000/- on 10.10.1992 were on record as MEX-7 and 8. The handwriting of the 1st Party workman was identified on these documents by MW-3. On the basis of MEX-3 MW-3 had stated that she had not opened the deposit loan account for which she had prepared the vouchers and credited her SB Account No. 1313 for Rs. 8,000/-. At MEX-10/Loans Sectional Daybook, there was entry of Rs. 8,000/- standing in the name of Vijaya.

MW-3 confirmed the said entry and further confirmed that there is a difference of Rs. 18,000/- in the total of the balance book as on 30.10.1992. Thus, there was an excess total in the sum of Rs. 18,000/-.

With regard to Charge No. 3, from MEX-12 a credit entry of Rs. 40,000/- on 02.11.1992 against the deposit ledger copy of account of P.N. Vijaya and P.N. Lalitha was reflected. As per Vigilance Officer Report/MEX-135, this entry was made without any debit in any of her SB Accounts or without any vouchers and there was no entry in GL. Thus, the total difference came to Rs. 58,000/-.

Regarding Charge No. 4 MEX-14 and 15 are the contra vouchers dated 03.11.1992 for Rs. 3,000/- regarding deposit loan in the name of P.N. Vijaya and P.N. Lalitha. The amount of Rs. 3,000/- was debited from the SB Account of the 1st Party and again credited the amount to her SB Account 1313; the signature of the 1st Party on these vouchers was identified by MW-3. MEX-17/Copy of deposit loan Sectional daybook as on 03.11.1992, after debiting Rs. 3,000/- under loan account head, the amount was credited to her own account, though she had not opened deposit loan account in the ledgers, but at deposit loan sectional daybook there was debit entry for Rs. 3,000/-, because of the contra entries the daybook on that date was tallied and was included as day's transactions.

11. Regarding Charge No. 5, MEX – 18 and 19 are the contra vouchers dated 21.11.1992 for Rs. 5,000/-, deposit loan in the name of P.N. Lalitha was debited and same amount was credited to the account of herself and her mother SB Account No. 222, the voucher were in her handwriting. As per the evidence of MW-3 Mr. Krishnaiah, MEX -21 was the copy of the deposit loan account for the period 19.11.1992 to 26.11.1992 but they were not mentioned in its document about the deposit of Rs. 5,000/-. In the Deposit loan sectional daybook/MEX-22 debit entry of Rs. 5,000/- was made and the amount is credited to Account No. 222 in the name of herself and her mother. Thus, the difference in the book by virtue of the manipulation raised to Rs. 66,000/-. Since, the Management had not furnished the document in support of the last para of the charge i.e., "The deposit loan balance as on 31.12.1992 is adjusted by including a fictitious entry of Rs. 66,000/- in the last page of the balance book", the Enquiry Officer held that the 2nd para of the charge as not proved and at the same time held the 1st para as proved.

Charge No. 6, are the contra vouchers MEX-23 and 24 dated 27.01.1993 debiting deposit loan account and crediting the amount to her account for Rs. 13,500/-, but there was no simultaneous entry in the deposit loan ledger copies but in the deposit loan sectional daybook MEX-26 dated 27.01.1993, debit entry was entered against the name of 1st Party from the ledger copy of her SB Account, entry was made on 27.01.1993 for Rs. 13,500/- with the narration "By deposit Loan". Thus, the difference rose to Rs. 79,500/-.

12. Regarding Charge No. 7, MEX -27 and 28 are the relevant contra vouchers for Rs. 10,000/- that pertain to depositing loan and crediting in favour of Smt. R.A. Devi Memorial Trust. In the debit vouchers on the offset side the words 2100 and P.N. Vijaya was struck off and was written as BPO. The Enquiry Officer held that she was interested in this transaction. The BPO No. 923646 dated 12.03.1993 for Rs. 10,000/- was issued and paid in clearing on 15.03.1993 as per MEX-30, by this debit entry the difference came to Rs. 89,000/-. The deposit loan amount of Rs. 10,000/- was not opened in the deposit loan ledger on 12.03.1993. An account bearing the CIS No. 0041/93/1/54 for an amount of Rs. 89,500/- was opened on 30.03.1993 without any authentication from the Branch Officials. The account was opened in the name of the 1st Party and her Mother; as on that date 1st Party manipulated deposit loan balance book by writing an extraneous entry for Rs. 89,500/- to adjust the Deposit Loan Account as on that date, but on 10.06.1993, the balance in the same deposit loan account was shown as NIL and again on 30.06.1993 an entry for Rs. 89,500/- was shown to adjust the deposit loan account.

Regarding Charge No. 8, relevant documents were MEX 32 and 33 the contra vouchers were dated 16.08.1993 for Rs. 30,130/- debiting the deposit loan of the 1st Party, she credited the overdraft and the records were identified in her handwriting. There was entry in the day's transaction for the amount but no account was opened. Thus, the total difference came to Rs. 1,19,630/-. There was overwriting at debit voucher dated 16.08.1993 for Rs. 1,17,530/- (MEX-37), the amount was given to deposit loans instead of M/s Timek, in the credit voucher also the amount was tampered by adding additional figure of Rs. 16,312/-. The amount of Rs. 1,01,218/- was proceeds of 12 bills discounted for the account of M/s Timek but she credited this amount to the deposit loan account to bring out the difference in deposit loan portfolio. This fact was evident from the OCC Ledger, an unauthorized entry of Rs. 16,312/- was made by her and totally Rs. 1,17,530 was misappropriated.

13. Regarding Charge No. 9, the supporting contra vouchers were MEX-46 and 47 prepared by the 1st Party by debiting the amount from the account of M/s D-tech Machines, she credited the amount to her own account, altered the entry in the MTL account from Rs. 5,000/- to Rs. 3,000/-, that apart she prepared a contra rectification voucher MEX-52 and 53.

Regarding Charge No. 10, the supporting document was credit vouchers for SBP for an amount of Rs. 15,912/- MEX-55, the said document without any authentication by any Officials is in the handwriting of the 1st Party.

Regarding Charge No. 11, MEX-56 is the credit voucher dated 21.07.1994 for Rs. 60,000/-, MEX-57 is the copy of the overdraft ledger of herself and her mother, on that date there was no debit entry for the amount. There was alternation in the heads Deposit Loan and Overdraft Account to increase the amount as Rs. 60,000/- and also increasing the credit of overdrafts account by Rs. 60,000/- on the same day. Income and Expenditure Sectional daybook of 06.09.1994 showed an alteration in the figure of the Depositor's interest and the amount was inflated to Rs. 10,000/-,

there was alteration in the expenditure column of the sectional daybook from Rs. 3,623/40 to Rs. 13,623/40, she inserted in the credit transfer column of daybook under the head Deposit loans a similar amount; other supporting documents are MEX-60 copy of the daybook of 29.08.1994 and MEX-61 is the copy of Income and Expenditure Sectional Daybook.

14. Regarding Charge No. 12, supporting documents were MEX-63, 64 and 65 copies of the Deposit Loan Ledgers of three of the clients. MEX-66, 67 and 68 are the copies of credit vouchers for closure of the three Depositor's account; interests charged on these accounts were not vouched.

Regarding Charge No. 13, the supporting documents MEX-72 is the copy of the Deposit Loan Ledger standing in the name of Mr. P.N. Suresh, she closed the account on 10.04.1995 and debited the interest to the account on the date of closure. MEX-73 was the copy of Income and Expenditure Sectional Daybook, MEX-74 is the copy of the Daybook on 08.06.1995, MEX-76 is the copy of the RIP Ledger opened in the name of Mrs. Jalajakshamma for Rs. 35,000/-, MEX-77 is the copy of Deposit Loan Balance Book, MEX-78 is the copy of Income and Expenditure Sectional Daybook as on 19.06.1995, MEX-79 is the copy of the Daybook of 19.06.1995, MEX-80 is the copy of the GL containing Expenditure head, MEX-81 is the copy of the Income and Expenditure Sectional Daybook of 08.07.1995, MEX-82 is the copy of the Income and Expenditure Sectional Daybook of 11.07.1995, MEX-83 is the copy of the General Ledger for Reinvestment Plan Deposits, MEX-85 is the weekly copy of the Branch, MEX-84 is the copy of Income and Expenditure Sectional Daybook of 02.08.1995, MEX-86 is the copy of the Daybook of the Branch dated 14.08.1995.

15. With regard to Charge No. 14, the supporting documents are MEX-87 copy of the Daybook of the Branch of 23.08.1995, MEX-88 is the copy of Income and Expenditure Sectional Daybook of 23.08.1995, MEX-89 is the General Ledger FDR Head, MEX-90 is weekly statement of 25.08.1995, MEX-91 Short term deposit ledger folio and the credit voucher and MEX-94 is the copy of SB Account standing in the name of the 1st Party.

Regarding Charge No. 15, the Enquiry Officer considered the alteration in the sectional daybook of 09.09.1995 (MEX-95).

Regarding Charge No. 16, the supporting documents were MEX-97 overdraft account of the 1st Party, MEX-98 copy of the credit voucher, MEX-99 is the copy of SB Ledger Sheet for Account No. 817, MEX-100 is the copy of the Daybook as on 12.09.1995.

Regarding Charge No. 17, supporting documents were MEX-80 copy of Expenditure Head of GL, MEX-102 copy of the Local BP Register for 18.09.1995 and 19.09.1995, MEX-103 is the copy of the Daybook of 19.09.1995, MEX-104 copy of the Debit Voucher for local BP of 19.09.1995, MEX-105 copy of Credit Voucher for Rs. 50,000/- dated 19.09.1995, MEX-111 copy of Local BP Account in GL.

16. Regarding Charge No. 18, the supporting documents are MEX-106 copy of the Income and Expenditure Sectional Daybook dated 18.09.1995, MEX-80 Expenditure Account in GL on 18.09.1995, MEX-109 copy of the Local BP Register of 21.09.1995, MEX-108 is the Debit Voucher for Local BP of 21.09.1995 and MEX-111 is the Local BP Account in the GL.

With regard to Charge No. 19, the supporting documents were Income and Expenditure Sectional Daybook MEX-12, Daybook MEX-13, STD receipt MEX-15.

Regarding Charge No. 20, supporting documents were MEX-116 copy of the Income and Expenditure Sectional Daybook as on 21.11.1995.

With regard to Charge No. 21, supporting documents were MEX-117 copy of the Income and Expenditure Sectional Daybook and MEX-80 Expenditure Head in GL.

Regarding Charge No. 22, supporting documents were MEX-118 copy of the Income and Expenditure Sectional Daybook as on 24.11.1995 and MEX-119 Credit Voucher of 21.11.1995.

17. Regarding Charge No. 23, supporting documents were MEX-121 DPN dated 04.08.1993 for Rs. 1,00,000, MEX-122 Application cum Pledge Letter for advance against deposits, MEX-123 Contra Voucher, MEX-36 is the OD Account Ledger Sheet of Mrs. P.N. Vijaya, MEX-126 Letter of undertaking for availing OD, MEX-125 the receipt pledged for the deposit loan availed by the 1st Party, MEX-128 the entries are seen from 04.11.1992 to 31.12.1992. Pertaining to Charge No. 23 except one charge other 3 allegations were not proved.

With regard to Charge No. 24, the supporting documents were MEX-126 the application for advance deposit signed by the 1st Party and her Mother for Rs. 2,00,000/- along with the pledged receipts, MEX-129 copy of the OD Balance Book from 11.06.1993 to 25.06.1993, MEX-131 and MEX-132 copy are the Contra Voucher dated 13.06.1994 written by the 1st Party, MEX-135 Copy of the Investigation Report and its Annexure, MEX-132 copy of the Debit Voucher dated 30.06.1993, MEX-133 of the Debit Voucher dated 15.07.1994 and MEX-134 copy of the Credit Voucher for Rs. 65,000/- dated 13.05.1992. In the absence of the clear evidence the charges a to h were held as :-

a) Not proved

b) Not proved

c) Proved

d) Not proved

e) Not proved

f) Not proved

g) Proved

h) Proved

With regard to Charge No. 25 .....

Taking into account the entire outcome of the findings 1 to 24 it was found that most of the charges are proved beyond any reasonable doubt and parts of some charges are not been proved.

18. On a perusal of these Enquiry Findings I am convinced that, the Enquiry Officer did not blindly believe the oral evidence of the witnesses but has scrutinized the documents relied by the Management to arrive at the above conclusion. As such the allegations proved during the enquiry have great impact on the business of the Institution and also trust and confidence reposed on her by her Institution. It is the basic necessity of the Bank to keep its integrity and gain the confidence of the customers. The 1st Party seeks for the benefit of her acquittal from the Criminal Case but the law is very much settled, result of Criminal Prosecution has no impact on the outcome of Departmental Enquiry, acquittal in Criminal Case may be for several reasons but once an employer losses its trust in the employee that is the end of the matter. Another loop hole she is pointing in the enquiry is, the prosecution has not taken the Handwriting expert's opinion to find out the truth of the charges levelled against her. In this regard it needs to be observed, MW-3 who was her immediate Officer had identified her signatures on the relevant documents and there was no effort to rebutte his evidence during the enquiry.

19. The 1st Party had urged before the appellate Authority that alleged irregularities could not have been taken place without the active participation and knowledge of the Branch Manager and Officers of the Bank. But such contention is of no avail to her. The Enquiry Officer in his enquiry report has observed that she had misused the loop holes in the system of functioning prevailing at the Branch. Though she had contended that the ignorant subordinate is exploited by the Officer, she had not built such defence before Enquiry Officer. Another fold of her contention is, she had remitted the entire amount that was allegedly withdrawn from the Bank; she has already been punished for the alleged misconduct, punishing her anymore amounts to punishing her twice. But such contention holds no water, she has voluntarily deposited the amount alleged to have been misappropriated. Even if it were to be so, her conduct amounts to temporary misappropriation. There is no mitigating circumstance to taper the punishment imposed on her. The action of the Management in dismissing her from service is legal and justified, she is not entitled for any relief. Hence, the following

AWARD

The reference is rejected.

(Dictated, corrected and signed by me on 08th April, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

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MANOJ KUMAR VERMA
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